3–11–97
Vol. 62 No. 47
Pages 11069–11306

federal register

Tuesday
March 11, 1997

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Presidential Documents

Title 3—

The President

Proclamation 6978 of March 7, 1997

National Older Workers Employment Week, 1997

By the President of the United States of America

A Proclamation

American workers age 55 and older represent one of our country's richest resources, and the value of their potential contribution to our society is immense. An estimated 70 percent of all Americans age 55 and older already actively contribute to our common good—by working, by volunteering, and by caring for sick and disabled relatives, friends, and neighbors.

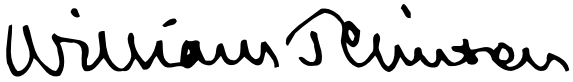
Despite their qualifications, however, many of these Americans experience serious difficulty finding work if they lose a job or desire new employment. Their search for employment can become increasingly challenging as they grow older.

Our laws and government agencies can—and do—offer protections, programs, and services for older workers. The Age Discrimination Act, the Older Americans Act, and the Age Discrimination in Employment Act all recognize the unique rights of such employees, and the Department of Labor alone helps thousands of workers each year through efforts such as the Senior Community Service Employment Program.

But it is up to employers also to recognize the potential of older Americans as employees—to recognize that by every common measure of job performance, older workers are as effective as younger people because of their unique skills, experiences, and judgment. And, it is appropriate that we designate a week to acknowledge that all workers should be judged and employed on the basis of their individual ability to do a job, regardless of age.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 9 through March 15, 1997, as National Older Workers Employment Week, and I urge all employers when they hire new workers to consider carefully the skills and other qualifications of men and women age 55 and older. I also encourage public officials responsible for job placement, training, and related services to intensify their efforts throughout the year to help older workers locate available jobs and training.

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



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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 618, 619, 620 and 626

RIN 3052–AB10

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Affairs; General Provisions; Definitions; Disclosure to Shareholders; Nondiscrimination in Lending; Capital Adequacy and Customer Eligibility; Correction and Effective Date

AGENCY: Farm Credit Administration.

ACTION: Final rule correction and notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 613, 614, 615, 618, 619, 620 and 626 on January 30, 1997 (62 FR 4429). The final rule amended current regulations governing the capital adequacy provisions and the customer eligibility provisions for Farm Credit System institutions. This document also corrects typographical and typesetting errors that appeared in the publication of the final regulation. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is March 11, 1997.

EFFECTIVE DATE: The regulation amending 12 CFR parts 613, 614, 615, 618, 619, 620 and 626 published on January 30, 1997 (62 FR 4429) and this correction to that final regulation are effective March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, and John J. Hays, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, and Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the Federal Register, typographical errors were inadvertently made in the authority citation to part 614 and § 615.5330(b)(1), and a typesetting error on page 4444.

List of Subjects

12 CFR Part 613

Agriculture, Banks, banking, Credit, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 618

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12 CFR Part 619

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12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 626

Advertising, Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Sex discrimination, Signs and symbols.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

2. On page 4444, first column, second line, is corrected by setting out the section heading to read as follows:

§ 613.3200 International lending.

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 is corrected to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

4. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart K—Surplus and Collateral Requirements

§ 615.5330 [Corrected]

5. On page 4448, first column, paragraph (b)(1) of § 615.5330 is corrected by removing the reference ''§ 615.5301(b)(2)'' and adding in its place, the reference ''§ 615.5301(b)''.

Dated: March 5, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–5967 Filed 3–10–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–137; Special Condition No. 25–ANM–123]

Special Condition: Boeing Model 747–200B, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Boeing Model 747–200B airplanes. This airplane, as modified by ARINC Incorporated, utilizes new avionics/electronic systems, such as the electronic flight information systems (EFIS), which perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of this special condition is February 12, 1997.

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

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–137, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–137. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making this special condition effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. This special condition may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–137.'' The postcard will be date stamped and returned to the commenter.

Background

On January 26, 1995, ARINC Incorporated of Annapolis, Maryland, applied for a Supplemental Type Certificate (STC) to incorporate the installation of an Allied-Signal (Bendix King) EFIS–10 Electronic Flight Instrument System (EFIS) on a Boeing Model 747–200B airplane. The installation may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Boeing Model 747–200B series airplanes are listed on Type Certificate (TC) A20WE. The airplanes are pressurized, large transport type airplanes powered by four wing-mounted turbofan engines.

Type Certification Basis

Under the provisions of § 21.101 of 14 CFR part 21, ARINC Incorporated must show that the modified Boeing Model 747–200B continues to meet the applicable provisions of the regulations incorporated by reference in TC A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC A20WE include the following for the Boeing Model 747–200B series airplanes: 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–8, plus Amendments 25–15, 25–17, 25–18, 25–20, and 25–39. In addition, under § 21.101(b)(1), the following regulations apply to the EFIS installation: §§ 25.1303(b) and 25.1322, as amended by Amendment 25–38; §§ 25.1309, 25.1321(a)(b) (d) and (e), 25.1331, 25.1333, and 25.1355 as amended by Amendment 25–41; and § 25.1316 as amended by Amendment 25–80. This special condition will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b or Part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–200B series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR part 11, § 11.49, of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–200B incorporates new avionics/electronic systems, such as the electronic flight instrument system (EFIS), that perform critical functions. These systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Boeing Model 747–200B, as

modified by ARINC Incorporated, which requires that new electrical and electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, this special condition is applicable to the Boeing Model 747–200B airplanes, as modified by ARINC Incorporated. Should ARINC Incorporated apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A20WE to incorporate the same novel or unusual design feature, this special condition would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing Model 747–200B airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special condition for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane,which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, aviation safety, Reporting and recordkeeping requirements.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701, 44702, 44704.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Boeing Model 747–200B airplane, as modified by ARINC Incorporated.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–5900 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–39]

Amendment to Class D, E2 and E4 Airspace; Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D, E2 and E4 surface area airspace at Gainesville, FL. GPS RWY 6 and GPS RWY 24 Standard Instrument Approach Procedures (SIAPs) have been developed for the Gainesville Regional Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAPs.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

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

SUPPLEMENTARY INFORMATION:

History

On January 13, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D, E2 and E4 airspace at Gainesville, FL. (62 FR 1699). This action would provide adequate Class D, E2 and E4 airspace for IFR operations at the Gainesville Regional Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D, E2 and E4 airspace designations are published in Paragraphs 5000, 6002 and 6004, respectively, of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D, E2 and E4 airspace

designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D and E2 airspace at Gainesville, FL. GPS RWY 6 and GPS RWY 24 SIAPs have been developed for the Gainesville Regional Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAPs.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatary evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(lat. 29°14′24″ N, long. 82°16′18″ W)
Gainesville VORTAC
(lat. 29°34′20″, N long. 82°21′45″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.3-mile radius of Gainesville Regional Airport, This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(lat. 29°41′24″ N, long. 82°16′18″ W)
Gainesville VORTAC
(lat. 29°34′20″, N long. 82°21′45″ W)

Within a 4.3-mile radius of Gainesville Regional Airport. This Class E airspace area is effective during the days and time established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ASO FL E4 Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(lat 29°41′24″ N, long. 82°16′18″ W)
Gainesville VORTAC
(lat. 29°34′20″ N, long. 82°21′45″ W)

That airspace extending upward from the surface within 1.5 miles each side of the Gainesville VORTAC 034° radial, extending from the 4.3-mile radius of Gainesville Regional Airport to 2.5 miles northeast of the VORTAC. This Class E airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia on March 3, 1997.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–6045 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–40]

Amendment to Class D and E2 Airspace; Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D and E2 surface area airspace at Orlando, FL. GPS RWY 7 and GPS RWY 25 Standard Instrument Approach Procedures (SIAPs) have been developed for the Orlando Executive Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAPs.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

History

On January 13, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D and E2 airspace at Orlando, FL. (62 FR 1698). This action would provide adequate Class D and E2 airspace for IFR operations at the Orlando Executive Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D and E2 airspace designations are published in Paragraphs 5000 and 5000, respectively, of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D and E2 airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D and E2 airspace at Orlando, FL. GPS RWY 7 and GPS RWY 25 SIAPs have been developed for the Orlando Executive Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAPs.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Orlando, FL [Revised]

Orlando Executive Airport, FL
(lat. 28°32′44″ N, long. 81°19′58″ W)
Orlando VORTAC
(lat. 28°32′34″ N, long. 81°20′06″ W)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.2-mile radius of Orlando Executive Airport and within 3.6 miles each side of Orlando VORTAC 254° radial extending from 4.2-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL, Class B airspace area. This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragarph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Orlando, FL [Revised]

Orlando Executive Airport, FL
(lat. 28°32′44″ N, long. 81°19′58″ W)
Orlando VORTAC
(lat. 28°32′34″ N, long. 81°20′06″ W)

Within a 4.2-mile radius of Orlando Executive Airport and within 3.6 miles each side of Orlando VORTAC 254° radial extending from 4.2-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orland, FL, Class B airspace area. This Class E airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 3, 1997.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–6048 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–38]

Amendment to Class E Airspace; Columbia, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Columbia, SC. A GPS RWY 31 Standard Instrument Approach Procedure (SIAP) has been developed for the Columbia Owens Downtown Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

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

SUPPLEMENTARY INFORMATION:

History

On January 8, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Columbia, SC (62 FR 1070). This action would provide adequate Class E airspace for IFR operations at the Columbia Owens Downtown Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Columbia, SC. A GPS RWY 31 SIAP has been developed for Columbia Owens Downtown Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO SC E5 Columbia, SC [Revised]

Columbia Metropolitan Airport, SC
(lat. 33°56′20″ N, long. 81°07′10″ W)
Corporate Airport
(lat. 33°47′41″ N, long. 81°14′45″ W)
Columbia Owens Downtown Airport
(lat. 33°58′14″ N, long. 80°59′43″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbia Metropolitan airport and within a 6.4-mile radius of Corporate Airport and

within a 6.5-mile radius of Columbia Owens Downtown airport.

* * * * *

Issued in College Park, Georgia, on March 3, 1997.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–6050 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 97–ACE–2]

Amendment to Class E Airspace, Fremont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Fremont Municipal Airport, Fremont, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft arriving or departing the Fremont Municipal Airport.

DATES: *Effective date.* 0901 UTC July 17, 1997.

Comment date. Comments must be received on or before April 30, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 97–ACE–2, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Fremont Municipal Airport, Fremont, NE. The amendment to Class E airspace at Fremont, NE., will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ACE–2.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (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 Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ACE NE E5 Fremont, NE [Revised]

Fremont Municipal Airport, NE
(lat. 41°26′57″N., long. 96°31′13″W.)
Fremont NDB
(lat. 41°27′01″N., long. 96°31′05″W.)

That airspace extending upward from 700 feet above the surface within 6.6-mile radius of the Fremont Municipal Airport and within 2.6 miles each side of the 306 bearing from the Fremont NDB extending from the 6.6-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on February 21, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–5902 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

[Airspace Docket No 96–ANM–033]

Amendment of Class E Airspace; Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jackson, Wyoming, Class E airspace by providing additional controlled airspace to accommodate a new Standard Terminal Arrival Route (STAR) to the Salt Lake City (SLC) International Airport.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–033, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On January 8, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Jackson, Wyoming, by providing additional controlled airspace to accommodate a new STAR to the SLC International Airport (62 FR 1064).

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

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Jackson, Wyoming. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WY E5 Jackson, WY [Revised]

Jackson Hole Airport, WY
(lat. 43°36′23″N, long. 110°44′17″W)
Jackson VOR/DME
(lat. 43°36′30″N, long 110°44′05″W)
Dunoir VOR/DME
(lat. 43°49′42″N, long. 110°20′08″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 21.4 miles south of the VOR/DME, and within 2.2 miles each side of the Jackson VOR/DME 020° radial extending from the VOR/DME to 10.5 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7 miles west and 10.5 miles east of the Jackson VOR/DME 020° radial extending from the VOR/DME 33.5 miles north of the VOR/DME, and within 4.3 miles each side of the Jackson VOR/DME 107° radial extending from the VOR/DME to 13.1 miles east of the VOR/DME, and within 5.3 miles north and 7.9 miles south of the Dunoir VOR/DME 102° and 282° radials extending from 7 miles east to 18.2 miles west of the Dunoir VOR/DME, and that airspace south of the Jackson VOR/DME bounded on the northwest by the southeast edge of V–465, on the east by the southwest edge of V–328, on the south by the north edge of V–4, and on the west by long. 112°00′00″W; excluding the Big Piney, WY, and the Rock Springs, WY, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on February 24, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–5899 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–41]

Amendment to Class E Airspace; Fort Stewart, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Fort Stewart, GA. A GPS RWY 32R Standard Instrument Approach Procedure (SIAP) has been developed for Wright AAF. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

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

SUPPLEMENTARY INFORMATION:

History

On January 2, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Fort Stewart, GA (62 FR 70). This action would provide adequate Class E airspace for IFR operations at Wright AAF.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Fort Stewart, GA. A GPS RWY 32R SIAP has been developed for Wright AAF. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Fort Stewart, GA [Revised]

Fort Stewart, Wright AAF, GA
(lat. 31°53′21″ N, long. 81°33′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Wright AAF.

* * * * *

Issued in College Park, Georgia, on March 3, 1997.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–6051 Filed 3–10–97; 8:45 am]

BILLING CODE 4410–13–M

14 CFR Part 97

[Docket No. 28821; Amdt. No. 1786]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards

Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 4, 1997.

Thomas C. Accardi,

Director, Flight Standards Services.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

** * * Effective Mar 27, 1997*

Sterling, CO, Sterling Muni, NDB or GPS RWY 33, Amdt. 2 CANCELLED
Sterling, CO, Sterling Muni, NDB or GPS RWY 33, Amdt. 2
Dalton, GA, Dalton Muni, NDB or GPS RWY 14, Orig CANCELLED
Dalton, GA, Dalton Muni, NDB RWY 14, Orig
Mitchellville, MD, Freeway, VOR or GPS RWY 36, Orig

** * * Effective May 22, 1997*

Cullman, AL, Folsom Field, NDB or GPS RWY 20, Amdt 2A CANCELLED
Cullman, AL, Folsom Field, NDB RWY 20, Amdt 2A

[FR Doc. 97–5898 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA069–4040, PA078–4041, PA083–4043; FRL–5697–7]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Source-Specific RACT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on three major sources. The intended effect of this action is to approve source-specific RACT determinations which establish the above-mentioned requirements in accordance with Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: This final rule is effective May 12, 1997 unless by April 10, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Boylan, (215) 566–2094, at the EPA Region III office or via e-mail at

boylan.jeffrey@ epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On August 1, 1995, September 20, 1995, December 8, 1995 and September 13, 1996, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions that are the subject of this rulemaking consist of RACT determinations for three individual sources of volatile organic compounds (VOCs) located in Pennsylvania. This rulemaking addresses those operating permits pertaining to two facilities, and one facility (Mercersburg Tanning Company) with no plan approval or operating permit as the facility has ceased all operations. These facilities are: 1) DMi Furniture, Inc. (Adams County), 2) R. R. Donnelley & Sons Company—West Plant (Lancaster County), 3) Mercersburg Tanning Company—(Franklin County).

Pursuant to section 182(b)(2) and (182(f) of the CAA, Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in section 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The August 1, 1995, September 20, 1995, December 8, 1995, and September 13, 1996, Pennsylvania submittals that are the subject of this notice, are meant to satisfy the RACT requirements for three sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific operating permits can be found in the docket and accompanying technical support document. Briefly, EPA is approving three RACT determinations as a revision to the Pennsylvania SIP. Several of the operating permits contain conditions irrelevant to the determination of VOC or NO_X RACT. Consequently, these provisions are not being included in this approval for VOC or NO_X RACT.

RACT

EPA is approving the operating permit (OP #01–2001) for DMi Furniture, Inc. located in Adams County. DMi Furniture, Inc. is a wood furniture manufacturer and is considered to be a major source of VOC emissions. All DMi spray booths use air assisted airless application of coatings. In addition, hybrid waterborne systems are to be used for certain coating operations. DMi expects a VOC emission reduction of approximately 38% using the reformulated hybrid waterborne system. Operating permit (OP #01–2001) will require, among other things, VOC limitations for the following coatings:

Catalyzed Varnish Topcoat—1.8 lb VOC/lb Solids
Waterborne Topcoat—0.8 lb VOC/lb Solids
Basecoats—0.2 lb VOC/lb Solids
Print Line Inks—0.5 lb VOC/lb Solids
Print Line Sealers—4.5 lb VOC/lb Solids
Spray Sealers (tie coat)—3.9 lb VOC/lb Solids

The permit specifies that VOC emissions from this facility can never exceed 370 TPY. The facility is also required to keep monthly records of coating usage, VOC emissions including cleanup solvents such that compliance with RACT requirements can be determined.

Although the 25 Pa. Code, Section 129.52 is for surface coating processes, Section 11 of Table I has not been federally approved, subsequently requiring this RACT determination for DMi Furniture, Inc.

EPA is approving the operating permit (OP #36–2026) for R. R. Donnelley & Sons—West Plant located in Lancaster County. R. R. Donnelley & Sons—West Plant is primarily a lithographic printing facility and is considered to be a major source of VOC emissions. The boilers are not subject to NO_X RACT requirements because the facilities potential NO_X emissions are less than 100 TPY.

The five (5) heatset web offset lithographic printing presses ink and dampening solutions on the webs are dried by evaporation in high air velocity natural gas fired dryers, with VOC emissions from the dryers controlled by two (2) thermal oxidizers. Operating Permit (OP #36–2026) will require, among other things, that destruction removal efficiency (DRE) of the thermal oxidizers be at least 90% for VOC's and combustion chamber temperatures be maintained at least at 1375 °F. With regard to capture efficiency parameters listed in the permit, no actual site testing has been done nor has a protocol been established to substantiate CE figures in condition #12. VOC content of all heatset inks and fountain solutions are not to exceed 45% and 3% by weight respectively.

The five (5) non-heatset web offset lithographic and two (2) letterpress printing presses are not controlled by add-on control devices. Operating Permit (OP #36–2026) will require, among other things, that VOC content of all non-heatset inks and fountain solutions are not to exceed 25% and 3% by weight respectively.

Permit conditions will require cleaning solutions to have a composite partial vapor pressure not to exceed 10 mm Hg at 20 °C or VOC content not to exceed 30% by weight. The company will limit the use of higher vapor pressure cleaning solvents to less than 5% by weight of the total manual cleaning solvents used. In addition, the company must keep all solvent laden rags in closed containers when not in use and keep all containers containing VOC's tightly closed when not in use.

Condition #6 requires the facility to keep applicable records and reports in accordance with 25 Pa. Code, Chapter 129.95 such that compliance with RACT requirements can be determined. Therefore, while no specific CE testing is required by the permit, such testing may be required in order to determine compliance with the applicable RACT requirements.

Although the entire Mercersburg Tanning Company facility ceased operations in October 1994, 25 PA. Code, Chapter 127, Subchapter E does not allow ERCs to be generated for emission reductions otherwise required by mandated programs. RACT is such an applicable program for Mercersburg Tanning Company. Therefore, EPA is approving a RACT determination for Mercersburg Tanning Company (no permits due to facility shutdown) located in Franklin County. RACT for the facility is determined to be:

—Transfer of all leather coating operations to Spray Lines A, B, and C beginning the phaseout in October 1993.
—Spray Lines A and B, applying solvent based coating, vented to a Regenerative Thermal Oxidizer (RTO). Based on testing results performed in May 1993, 100% capture plus a destruction efficiency of 97% used to calculate VOC emissions from Lines A and B.
—Spray Line C, applying water based coatings (water content 70–90% by volume). Coating restrictions on Line C limited to the following: 3.5 lb VOC/gal (less water) for base coats and 2.8 lb VOC/gal (less water) for intermediate coat.

—Cleaning solvents associated with Lines A and B took place within booths and vented to RTO. Water utilized as cleaning solvent for Line C.

Mercersburg Tanning Company was a leather coating operations facility and considered a major source of VOC emissions. In addition, EPA is using this document to recognize the emission reduction credits (ERCs) generated by the shutdown of the Mercersburg Tanning Company facility; a total of 20 tons of VOC per year.

The source-specific RACT emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on August 1, 1995, September 20, 1995, December 8, 1995 and September 13, 1996, and are the subject of this rulemaking notice. These emission limitations will remain unless and until they are replaced pursuant to 40 CFR part 51 and approved by the U.S. EPA.

EPA is approving this SIP revision 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, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 12, 1997 unless, by April 10, 1997, adverse or critical comments are received.

If 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. 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 on May 12, 1997.

Final Action

EPA is approving three source-specific RACT determinations, two of which involve operating permits and one (Mercersburg Tanning Company) which does not involve any type of permit.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state 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.

Administrative Requirements

A. Executive Order 12866

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 E.O. 12866 review.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

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 the rule 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 populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the RACT approval for DMi Furniture, Inc, R.R. Donnelley & Sons—West Plant, and Mercersburg Tanning Company, must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 13, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(114) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(114) Revisions to the Pennsylvania Regulations Chapter 129.91 through 129.95 pertaining to VOC and NO_X RACT, submitted on August 1, 1995, September 20, 1995, December 8, 1995 and September 13, 1996 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Four letters dated August 1, 1995, September 20, 1995, December 8, 1995 and September 13, 1996 from the Pennsylvania Department of Environmental Protection transmitting three source-specific RACT determinations; two of which involve operating permits and one (Mercersburg Tanning Company) which does not involve any type of permit. The three sources are:

(*1*) DMi Furniture, Inc. (Adams County)—wood furniture manufacturer.

(*2*) R. R. Donnelley & Sons Company, West Plant (Lancaster County)—printing facility.

(*3*) Mercersburg Tanning Company (Franklin County)—leather coating facility.

(B) Operating Permits (OP):

(*1*) DMi Furniture, Inc.—OP #01–2001, effective June 13, 1995, except for the expiration date of the operating permit.

(*2*) R.R. Donnelley & Sons Company, West Plant—OP #36–2026, effective July 14, 1995, except for the expiration date of the operating permit and the parts of conditions 5, 9b & 20 pertaining to Hazardous Air Pollutants (HAP's).

(ii) Additional material.

(A) Remainder of August 1, 1995, September 20, 1995, December 8, 1995 and September 13, 1996 State submittals pertaining to DMi Furniture, Inc, R. R. Donnelley & Sons—West Plant, and Mercersburg Tanning Company.

3. Section 52.2037 is amended by adding paragraph (h) to read as follows:

§ 52.2037 Control Strategy: Carbon monoxide and Ozone.

* * * * *

(h) VOC RACT determination for four emission units at Mercersburg Tanning Company—Franklin County: Spray Lines 3 thru 7, Attic Line, Spray Lines A and B, Spray Line C. The VOC RACT determination is as follows: for Spray Lines 3 thru 7; all work transferred to Spray Lines A and B, for Attic Line; all work transferred to Spray Line C, for Spray Lines A and B; vented to a Regenerative Thermal Oxidizer (RTO) with required 100% capture efficiency and 97% destruction efficiency, for Spray Line C; coating restrictions of 3.5 lb VOC/gal (less water) on base coats and 2.8 lb VOC/gal (less water) on intermediate coats. VOC RACT for cleaning solvents associated with Lines A and B vented to RTO and water utilized as cleaning solvent for Line C.

[FR Doc. 97–5974 Filed 3–10–97; 8:45 am]

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40 CFR Part 86

[FRL–5702–3]

Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of direct final rule amendments.

SUMMARY: On November 15, 1996, EPA published a direct final rule extending the applicability of durability regulations for light duty vehicles and light duty trucks [61 FR 58618]. This action was published without prior approval because EPA anticipated no adverse comments. Due to the receipt of an adverse comment, EPA is removing the amendments made by the direct final rule and restoring the regulatory text that existed prior to the direct final rule.

EFFECTIVE DATE: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Environmental Protection Agency, Office of Air and Radiation, (313) 668–4502, 2565 Plymouth Road, Ann Arbor, MI 48105.

SUPPLEMENTARY INFORMATION: On November 15, 1996, EPA published in the Federal Register a direct final rule extending indefinitely the applicability of durability regulations for light duty vehicles and light duty trucks [61 FR 58618]. The direct final rule was published without prior proposal in the Federal Register with a provision for a thirty day comment period and a statement that if adverse or critical comments were received by this time, the rule would be withdrawn and resubmitted as a proposed rule. Due to the receipt of an adverse comment within the comment period, EPA is removing the amendments made by the direct final rule and is resubmitting those amendments in a separate action published elsewhere in this issue of the Federal Register as a proposal. Because the effective date of the direct final rule was January 14, 1997, the regulatory language which was amended has been changed to read as it did prior to the direct final rule.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: March 4, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Sections 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

§ 86.094–13 [Amended]

2. In § 86.094–13, paragraphs (a)(1), (c)(1), (d)(1), (e)(1), and (f)(1) are amended by revising the words ''1994 and beyond'' to read ''1994 through 1998''.

§ 86.094–26 [Amended]

3. In § 86.094–26, paragraphs (a)(2), (b)(2)(i), and (b)(2)(ii) are amended by revising the words ''1994 and beyond'' to read ''1994 through 1998''.

[FR Doc. 97–5878 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 87

[IB Docket No. 95–91; GEN Docket No. 90–357; FCC 97–70]

Digital Audio Radio Service in the 2310–2360 MHZ Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: After carefully reviewing the comments and information the Commission received following issuance of the Notice of Proposed Rulemaking, concerning service and licensing rules for the Digital Audio Radio Service (DARS) in the 2310–2360 MHZ frequency bands, the Commission reached the following conclusions. The Commission will license satellite DARS. Opponents of the new service have not shown that its potential adverse impact on local radio service outweighs its potential benefits. Based on the record, the Commission finds that an economically viable satellite DARS system will require at least 12.5 MHz of spectrum. Although the Commission has allocated 50 MHz of spectrum for satellite DARS in the S-band (2310–2360 MHz), recently enacted legislation directs the Commission to reallocate 25 MHz of that spectrum for any services consistent with the international allocation and to assign licenses for that 25 MHz by auction. Accordingly, in this proceeding the Commission will designate only two licenses for satellite DARS in the 25 MHz that remains in the part of the S-band allocated for satellite DARS. The Commission will award both satellite DARS licenses using competitive bidding, as it proposed in the NPRM, to resolve mutual exclusivity among the current applicants, under the auction rules they adopt today. The Commission also adopts service rules for satellite DARS licensees, including milestone requirements. Three of the four DARS applicants applied for pioneer's preferences. However, following unanimous recommendations from a panel of satellite experts that no pioneer's preferences be granted for satellite DARS all three applicants have withdrawn their applications. The intended effect of this action is to establish rules and policies for the DARS service in the 2310–2360 MHz frequency band.

EFFECTIVE DATE: The new and amended rules in Sections 25.144, 25.201, 25.202, 25.214 and 87.303 shall become effective April 10, 1997; the new rules in Sections 25.401, 25.402, 25.403, 25.404, 25.405, and 25.406 shall become effective March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara at (202) 418–0754 or Ron Repasi at (202) 418–0768 with the International Bureau or Amy Zoslov or Christina Eads Clearwater at (202) 418–0660 with the Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in IB Docket No. 95–91; GEN Docket No. 90–357; RM No. 8610; PP–24; PP–86; and PP–87, FCC No. 97–70 (adopted and released March 3, 1997). The complete text of the *Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking

1. The Commission will summarize the background in this proceeding, which is described in greater detail in the *NPRM*, 60 FR 35166, (July 6, 1995) and in prior orders. Satellite CD Radio, Inc. (CD Radio) initiated this proceeding in 1990 by filing a petition to allocate spectrum for satellite DARS and an application to provide the service. In February 1992, the World Administrative Radio Conference (WARC–92) adopted international frequency allocations for Broadcasting Satellite Service (BSS) (sound)(the international term for satellite DARS). Internationally, this band is also allocated on a primary basis to radiolocation services and fixed and mobile terrestrial services. In November 1992, the Commission established a proceeding to allocate satellite DARS spectrum domestically and announced a December 15, 1992 cut-off date for satellite DARS license applications to be considered with CD Radio's. Of the six license applicants that filed before the cut-off; four remain: CD Radio, Primosphere Limited Partnership (Primosphere), Digital Satellite Broadcasting Corporation (DSBC) and American Mobile Radio Corporation (AMRC). In January 1995, the Commission allocated the 2310–2360 MHz band for satellite DARS on a primary basis.

2. In the June 1995 *NPRM*, the Commission posed many questions about satellite DARS. The Commission requested detailed information on the new service's potential economic impact on terrestrial broadcasters. The *NPRM* asked about the most appropriate service design and regulatory classification. The Commission sought comment on what public interest obligations to impose and queried whether providers should be permitted to offer ancillary services. The *NPRM* proposed three possible licensing options and rules to allow expeditious licensing after an option was chosen. After the *NPRM* was released, the Appropriations Act directed the Commission to reallocate spectrum at 2305–2320 MHz and 2345–2360 MHz for all services consistent with international allocations and to award licenses in that portion of the band using competitive bidding. As a consequence, the licenses designated pursuant to this order will be in the spectrum between 2320 and 2345 MHz.

3. In the *NPRM* and in prior orders, the Commission discussed the benefits of satellite DARS proffered by the proponents. These include introduction of a new radio service to the public, a national distribution of radio programming to all areas, including underserved and unserved areas and population groups, the creation of jobs and the promotion of technological development in the satellite and receiver industries, and the improvement of U.S. competitiveness in the international economy. The Commission sought comment on its tentative conclusion that satellite DARS offers substantial public benefits.

4. The Commission also invited detailed comment and information on the economic impact of satellite DARS on existing radio broadcasters. It acknowledged the high level of concern that terrestrial broadcasters have expressed about satellite DARS. In addition to three associations of broadcasters, more than one hundred terrestrial radio station owners or operators have submitted individual letters opposing satellite DARS.

5. Recognizing the significant public value of terrestrial radio service, the Commission must weigh the potential public interest benefits of satellite DARS against its potential adverse impact on terrestrial radio. This impact is relevant ''to the extent that [it] would predictably lead to serious loss of important services to consumers, taking into account the potential for future enhancements of terrestrial broadcasting by the introduction of new technologies.'' In the *NPRM*, the Commission emphasized

that, pursuant to Section 7 of the Communications Act, opponents of a new technology, such as satellite DARS, bear the burden of demonstrating that it is inconsistent with the public interest. The Commission has previously noted that, ''[t]he public interest in this regard is the provision of services of value to the listening public and includes the protection of competition, not competitors.''

6. Satellite DARS can offer high-quality radio signals to listeners who currently receive few terrestrial radio signals. Commenters disagree concerning how many people are underserved by local radio. One respondent submitted a county-based analysis of listening diaries contending that only 6,100 people in the U.S. aged 12 and over receive less than six radio signals. However, that study defined a station as ''covering'' a U.S. county if even one diary recorded having received its signal. Given that AM signals travel long distances at night and that such skywave signals fluctuate significantly even when usable, the Commission believes that such diary evidence may not accurately indicate the size of the population that receives radio signals.

7. One study indicates that 722,102 persons (0.3% of the U.S. population) are covered by no FM stations, 2.4 million persons (1.0% of the U.S. population) are covered by one or fewer FM stations, and 22 million persons (8.9% of the U.S. population) are covered by five or fewer FM stations. The NAB criticized this study, however, because it does not include AM radio stations, even though more than 40% of all radio stations are AM stations and even though AM signals often travel much further than FM signals at night. AM signals, due to limited bandwidth and greater susceptibility to noise and interference, do not provide as high fidelity sound as FM signals. Thus, FM signal quality may be closer to the quality of that satellite DARS would provide. While the Commission is unable to estimate an exact figure for the number of potential radio listeners who are currently underserved, it finds that the record is sufficient to indicate that a significant number of persons in the U.S. receive few high-quality audio signals. Satellite DARS offers the substantial benefit of providing these persons with many additional high-quality audio signals.

8. It is the Commission's view that satellite DARS will particularly benefit communities where terrestrial broadcast service is less abundant. The record shows that counties with smaller populations have fewer radio stations and that smaller markets have fewer radio formats. The 33.2% of the U.S. population living in the top ten radio markets have access to an average of 26 formats, while the 18% of the U.S. population living in radio markets ranked 100–261 have access to an average of only 14.9 formats. Persons living outside these 261 ranked markets are likely to have still fewer radio formats available. Given that each satellite DARS applicant proposes to provide 20 or more channels nationwide, satellite DARS would significantly reduce the proportional discrepancy in the geographic distribution of radio service.

9. Moreover, satellite DARS can provide new services that local radio inherently cannot provide. With its national reach, satellite DARS could provide continuous radio service to the long-distance motoring public, persons living in remote areas, and may offer new forms of emergency services.

10. Satellite DARS may also be able to foster niche programming because it can aggregate small, nationally dispersed listener groups that local radio could not profitably serve. Commenters suggest that satellite DARS could fulfill a need for more educational programming, rural programming, ethnic programming, religious programming, and specialized musical programming. One nationally representative survey found that 10–27% of the respondents indicated a strong interest in accessing programming formats that are not widely available. Evidence from a survey by the National Endowment for the Arts suggests that niche marketing opportunities exist for some of the less popular radio formats.

11. The Commission believes that licensees will have an incentive to diversify program formats and thereby provide valuable niche programming. The Commission recognizes that satellite DARS licensees are likely to provide the programming that is most profitable. Nonetheless, given that the Commission anticipates each satellite DARS licensee will control more than 20 channels, each licensee will have an incentive to diversify programming so that one channel will not directly compete with another channel that the licensee itself controls. The Commission has noted the importance of this incentive, particularly with respect to entertainment programming, in other proceedings.

12. In the *NPRM*, the Commission tentatively concluded that implementation of satellite DARS would foster the development of new technology. NAB has argued that U.S. implementation of satellite DARS is not necessary to advance satellite DARS technology. While this may be true, the Commission nevertheless believes that U.S. implementation, by providing large-scale market-based consumer feedback and increased economic incentives for further technological advances, would foster faster and more customer oriented development.

13. The Commission concludes that licensing operators to provide satellite DARS will yield substantial benefits to consumers. The Commission now evaluates whether opponents have met their burden of showing that these benefits are outweighed by the potential harm to listeners from potential loss of terrestrial service resulting from increased competition from satellite DARS.

14. In the *NPRM*, the Commission sought comment on the effect of satellite DARS on terrestrial radio listenership. The Commission explicitly requested commenters to consider the characteristics of satellite DARS that distinguish it from terrestrial radio. Commenters often failed to do so. Instead, several commenters implicitly assumed that satellite DARS' effect on local radio would be similar to the effect from competition generated by new local radio stations. Given the distinguishing features of satellite DARS—it is a national service, it will require new and relatively costly equipment, and it may be offered via paid subscription—the Commission finds that the effect of satellite DARS on terrestrial radio is likely to be significantly smaller than the effect of additional terrestrial radio stations.

15. For example, one commenter includes a consumer survey which suggests that satellite DARS would cause a decline of 11.6% in terrestrial radio listenership. The appropriate interpretation of this figure is not clear, however, because the survey did not take into account the potential cost to the consumer of satellite DARS equipment, and the subscription fee included in the survey was only half of what one satellite DARS applicant (CD Radio) has proposed. Moreover, the survey failed to consider the possible introduction of terrestrial DARS in assessing consumer interest in satellite DARS. For these reasons the Commission believes that this survey may overestimate the likely decline in terrestrial radio listenership. And yet even in this survey 80% of respondents indicated that they would not reduce the time they spend listening to terrestrial radio if satellite DARS was available. However, the Commission realizes that surveys of predicted

consumer response to a new and untried service may be somewhat unreliable.

16. By analogy, the diffusion of other new services and technologies may provide valuable perspective on the time period in which satellite DARS' may affect terrestrial radio listenership. In 1994, six years after their introduction, CD players were in just 3.2 percent of all automobiles. This experience is recent, involves high-quality audio service and roughly comparable equipment costs, and relates to automobiles, perhaps the most likely market for satellite DARS receivers. On the other hand, for the first few years after CD players' introduction there were significant technical problems with their operation in automobiles, and CD players are less convenient to operate than radios. These factors may have reduced the rate at which CD players were installed in cars. Nonetheless, CD players offer a useful example by which to evaluate the penetration profile for satellite DARS receivers. Given anticipated satellite launch dates for satellite DARS applicants (1998–1999) and the example of the diffusion of CD players, the Commission believes it is reasonable to project that by about 2005 the over-all penetration rate of satellite DARS receivers in radio listening environments may not be significantly greater than 4%.

17. Estimating listening time diversion depends on the share of listening time allocated to satellite DARS when the listener has a choice between satellite DARS and terrestrial radio. Drawing an analogy with the diffusion of cable services indicates that established programming loses audience share relatively slowly. In 1984, about a decade after the introduction of premium cable services and the development of 24 to 36 channel cable TV systems, cable channels attracted 14% of television viewing time. After another decade, the share of cable channels in television viewing time rose to 30%. An important weakness in this analogy is that the difference between cable programming and network programming during this period is probably significantly greater than will be the difference between satellite DARS programming and terrestrial radio programming. Nonetheless, the Commission believes that owners of satellite DARS receivers will continue to allocate a significant share of their listening time to terrestrial radio in order to hear music or news of local interest. Even with rapid, further penetration of satellite DARS receivers, the Commission expects that satellite DARS' share of radio listening time will grow relatively slowly over decades.

18. In the *NPRM,* the Commission asked parties to consider advertising revenues that terrestrial radio might lose because of satellite DARS. The record indicates two possible causes of terrestrial radio revenue loss: competition with satellite DARS for advertising dollars and competition with satellite DARS for listeners' attention.

19. While the Commission recognizes that satellite DARS has significant competitive advantages in offering advertising to a national audience with satellite DARS receivers, several factors may limit the possible significance to terrestrial radio of such additional competition. First, at this time, only one out of the four satellite DARS applicants has indicated an intention to implement its system on a non-subscription, advertiser-supported basis. Second, a large share of the national radio audience is not likely to have satellite DARS receivers, at least for a significant period of time. Third, national advertising revenue amounts to only 18% of terrestrial radio advertising revenue and is on average less important for small-market stations than for large-market stations. Local advertising revenue is much more important than national advertising revenue for terrestrial radio's viability and prevalence, and, at this time, the Commission has no evidence that satellite DARS would be able to compete for local advertising revenue.

20. More important to terrestrial radio is possible competition with satellite DARS for listener attention because this new offering could reduce the size of the local listening audience available for terrestrial radio stations to sell. The Commission recognizes that a decrease in the audience size could lead to some reduction in terrestrial station revenues. As discussed above, however, the Commission believes the reduction would be modest, although the record leaves room for significant uncertainty.

21. Commenters have not fully analyzed the relationship between reductions in listenership and reductions in revenue. The Commission does not necessarily agree with those commenters who assert that terrestrial radio station revenue will fall one-for-one with any fall in listenership. Because the price of local radio advertising may rise, the effect on local radio revenue may be smaller than the effect on listenership. However, regardless of the precise relationship, the Commission does assume that a decrease in listenership will lead to a decrease in advertising revenues, if other variables are held constant.

22. In the NPRM, the Commission asked questions about the impact of satellite DARS on the financial viability of local broadcast stations. In general, the Commission encourages competition for the provision of telecommunications services wherever possible and removes barriers for new competitors. Commenters differ sharply on the effect of satellite DARS on the profitability of terrestrial stations, with estimates of the reduction in terrestrial stations' profitability spanning 2.1–3.5% to 52%–122%. The wide range of these estimates do not allow the Commission to judge the effect of satellite DARS on terrestrial stations' profitability. The Kagan Study, by focusing on historical indicators of revenue and profitability and not considering the time path for satellite DARS diffusion, likely overestimates the potential impact of satellite DARS on terrestrial stations profitability. The MTA Study's audience diversion figures are lower than what the Commission believes, and the Commission questions the relevance of their use of the ratio of satellite DARS receiver owners to the total U.S. population, given that segments of the population, such as infants, are not potential satellite DARS owners. The Commission also finds their revenue loss projections to be unsubstantiated and unconvincing.

23. The record supports a finding that the impact of satellite DARS would likely be greater on small-market terrestrial stations than large-market terrestrial stations. This result is not surprising because it is likely that the introduction of a 30-channel satellite DARS system could divert a larger share of the audience in a market with only 6 stations than in a market with 60 stations. Nonetheless, the record does not establish that any predicted reduction in station profitability would harm overall station viability.

24. In fact, the record suggests that profitability figures may be a weak indicator of radio station viability. The wide range in the audience size distribution for existing radio stations suggests that most radio stations could remain viable given plausible audience reductions due to satellite DARS. Despite evidence that a large percentage of radio stations are experiencing losses, there is also evidence that overall the industry is very healthy. The value of radio station purchases in 1996 was 315% higher than in 1995 and radio station values as a multiple of cash flow also rose sharply. Factors such as debt financing and start-up costs may explain

why radio stations would stay in business while reporting losses.

25. The concern about licensing satellite DARS focuses on its impact on the provision of locally oriented radio service. Satellite DARS proponents argue that the ability to offer local content will give terrestrial broadcasters a competitive advantage. Terrestrial broadcasters argue that providing local content is a public service that depends, in effect, on cross-subsidization from more profitable programming.

26. The Commission concludes that the record lacks systematically sampled, quantitative evidence about the listening time, revenue base, and profitability of local content. Nonetheless, if local content were relatively unprofitable for every station, one would expect competition among terrestrial stations to result in minimal local programming on most stations. Yet the record indicates that such analysis is not necessarily accurate; despite vigorous competition among stations, some stations provide much local programming, while others provide relatively little. Competition from satellite DARS may create incentives for at least some terrestrial stations to increase their emphasis on local programming in order to attempt to differentiate their service from satellite DARS. It is unclear the degree to which that might affect overall station profits.

27. In sum, although healthy satellite DARS systems are likely to have some adverse impact on terrestrial radio audience size, revenues, and profits, the record does not demonstrate that licensing satellite DARS would have such a strong adverse impact that it threatens the provision of local radio service.

28. The Commission also notes that revenue of terrestrial radio is projected to grow at a real (inflation adjusted) rate of about 4% per year. Such projected revenue should mitigate, at least to some extent, the eventual impact on terrestrial stations of satellite DARS. The Commission also notes that recently, it implemented provisions of the Telecommunications Act of 1996 and repealed all terrestrial radio national ownership limits and significantly relaxed local ownership limits. These changes should lead to reduced operating costs and increased profits for terrestrial station owners that take advantage of the new rules. The Commission expects any possible impact of satellite DARS on terrestrial radio's revenue to be relatively small and to occur over a long period of time. The Commission rejects as unnecessary a proposed phase-in and evaluation period for satellite DARS. The Commission concludes that opponents of satellite DARS have not shown that its potentially adverse impact on local radio outweighs its potential benefits to the American radio listener.

29. There is uncertainty inherent in any attempt to predict the impact of satellite DARS on the terrestrial radio industry. The technologies, structure, and regulation of the communications industry are changing dramatically. Developments in the next decade may significantly change the market for both satellite DARS and terrestrial broadcasting. Although opponents of satellite DARS have not shown that it will have a sudden and dramatic adverse impact on terrestrial broadcasting, the Commission cannot entirely rule out the possibility of a major adverse impact. The Commission emphasizes that it remains committed to supporting a vibrant and vital terrestrial radio service for the public. Accordingly, the Commission will continue to monitor and evaluate the potential and actual impact of satellite DARS, particularly in small radio markets, so that it will be able to take any necessary action to safeguard the important service that terrestrial radio provides.

30. In addition, the Commission continues to support the efforts of industry committees studying technical standards that would allow terrestrial radio broadcasters to convert to digital transmissions. When it appears that a viable system has been designed, the Commission will act expeditiously to consider changes to its rules to allow AM and FM licensees to offer digital sound. The Commission also remains open to considering other ways to encourage the continued viability of terrestrial radio if the adverse impact of satellite DARS on terrestrial radio proves to be substantially greater than expected.

31. On February 17, 1995, Underripe National Radio Sales, Inc. (Underripe) filed a petition for reconsideration of the Commission's domestic *Report and Order*, 10 FCC Rcd 2310 (1995), 60 FR 8309 (February 14, 1995) (''*Allocation Order*''). Underripe claims that satellite DARS could have an adverse impact on existing radio services and that, therefore, the Commission should not allow satellite DARS operations until terrestrial DARS is licensed. Underripe also suggests a number of guidelines it believes the Commission should adopt with respect to licensing and service rules for satellite DARS. The Commission denies the petition for the reasons given above. That is, the record evidence indicates that the public interest would be served by permitting an innovative new technology and service, satellite DARS, to become available as a competitive choice for consumers. The Commission notes that the petition does not contain any analysis which would undermine those reasons.

32. The Consumer Electronics Manufacturers Association (CEMA) argues in an *ex parte* submission, based on its preliminary draft report on various digital audio radio technology test results, that satellite DARS cannot be successfully provided at 2.3 GHz. Specifically, CEMA argues that ''S-band operations suffer from a significant and startling level of signal blockage,'' that to provide satellite DARS using S-band frequencies will require hundreds or thousands of gap fillers and that satellite DARS in the S-Band has ''no likelihood for nationwide commercial acceptance.''

33. The Commission has decided nevertheless to license DARS in the S-Band. CEMA's testing of signal propagation focused on terrestrial technologies; CEMA tested only one generic satellite technology and did not test any of the system designs of the four satellite DARS applicants. Nor does CEMA comment on any of the specific proposals submitted by the four DARS applicants. In addition, CEMA offers no new relevant information. It has been widely known and discussed in the record that DARS providers will need to rely on terrestrial repeaters and gap fillers. As with all new services, the FCC cannot prove or disprove viability. Only the market place can make this determination. CEMA's assertion that satellite DARS is not commercially viable in the S-Band is belied by the interest of many DARS investors who apparently have concluded that a viable satellite DARS service can be offered in the S-Band.

34. Moreover, CEMA's recommendation that the FCC consider other spectrum options for satellite DARS, such as the L-Band, is beyond the scope of this proceeding. The 2310–2360 MHz band [S-Band] was allocated for satellite DARS internationally at WARC–92 and domestically in 1995. Frequencies in the L-Band, 1452–1492 MHz were considered and rejected. In the domestic *Allocation Order* the Commission noted that ''commenters strongly favored [S-Band] over, for example, the 1.5 GHz band [L-Band]'' in part because the U.S. Government and U.S. commercial mobile aeronautical telemetry (MAT) already operates in the L-Band and it would be very difficult for them to relocate entire operations to the S-band. Satellite DARS cannot share with MAT systems in the same frequency band in the same coverage

area. And even if L-Band had been available, no persuasive evidence suggests that it is significantly better spectrum in which to receive satellite DARS signals. For the reasons stated above, the Commission finds CEMA's argument against proceeding to license satellite DARS applicants in the S-Band unpersuasive.

35. In the *NPRM*, the Commission proposed three options for licensing satellite DARS systems. Under Option One, the Commission would have assigned the entire 50 MHz of spectrum allocated for satellite DARS to the four pending applicants, giving each 12.5 MHz, or 10 MHz, if the Commission determined that the lower 10 MHz of the band should not be assigned at the time of its Order due to international coordination constraints. Option Two was to designate less than the full amount of useable spectrum for satellite DARS and to award the remaining spectrum to new applicants. Option Two proposed licensing the four applicants and assigning them each a band segment of less than 10 MHz of spectrum. If either of the two band segments (one for pre-cut off applicants and one for new applicants) could not accommodate all applicants, the Commission would resolve mutual exclusivity via competitive bidding. Option Three was to reopen the cut-off for satellite DARS applications and allow additional applicants to file proposals for all of the useable DARS spectrum.

36. In light of the recent legislation directing the Commission to conduct an auction for use of 25 MHz of the S-band spectrum previously allocated solely to DARS, the Commission cannot adopt any of the three licensing options exactly as proposed in the *NPRM*. After enactment of that legislation and the ensuing *WCS Order*, only 25 MHz remains exclusively for DARS. The licensing plan the Commission adopts today for that remaining spectrum is a logical outgrowth of Option Two, modified in light of the comments received in this proceeding and the recent legislation. In determining how many licenses may be awarded for use of the remaining DARS spectrum and how those licenses should be assigned, the Commission must first determine how much spectrum each satellite DARS licensee will require to operate an economically viable satellite DARS system.

37. In the *Allocation Order*, the Commission found that, based on the information available at that time, satellite DARS was the best use of all of the 50 MHz of spectrum assigned to U.S. satellite DARS by WARC–92. The Commission requested comment on a number of issues in the *NPRM* to help it determine the best way to make individual satellite DARS frequency assignments. Specifically, the Commission sought comment on the following: the amount of spectrum and number of channels required for a satellite DARS system to be economically viable; the number of competitors that are necessary to ensure sufficient competition in satellite DARS; the possible number of channels per MHz capable of being delivered via satellite to a mobile user; alternative band plans that could be adopted for satellite DARS; possible uses for spectrum that is not licensed for satellite DARS, and, whether the proposal to license less than 50 MHz of spectrum would create a mutually exclusive situation among the four current applicants. Based on comments the Commission received on these specific issues, it concludes that 12.5 MHz of spectrum is necessary to offer enough channels for an economically viable satellite DARS system. In addition, in light of the recent legislation opening 25 MHz of spectrum for use by additional services, the Commission concludes that two licenses can be awarded.

38. While the Commission is not sure of the optimal amount of spectrum necessary for satellite DARS, its goal is to try to determine spectrum block sizes and geographic areas that are most closely suited to provide for efficient provision of the most likely expected use. In this case, because this is a satellite service, the license areas should be nationwide and the Commission has evaluated the evidence about the minimum spectrum block sizes necessary to economically provide satellite DARS. The Commission begins its analysis of determining how much spectrum a single satellite DARS provider will require by considering what the record reveals about how many channels are necessary to operate an economically viable satellite DARS system. Because satellite DARS is a new service, there is an inevitable uncertainty about what precise configuration of channels will best satisfy consumer demand. The record contains no conclusive evidence establishing a specific minimum number of channels needed for a viable DARS system. The Commission will rely on the representations of the applicants which are based on their own market research. The record indicates that a range of channels from 19 to 44 is needed for a viable service.

39. The applicants appear to base their estimated channel requirements on a cable television model in which operators bundle large and diverse packages of channels. The conclusion drawn from the cable television model is that no single channel attracts a large viewing audience, but subscribers value the service because they watch a few channels regularly and occasionally enjoy sampling a wider range of available programming. While the record does not show exactly how many channels a satellite DARS operator must offer to be economically viable, the cable television analogy demonstrates that some critical mass of channels is needed to provide sufficient programming diversity for consumers with diverse tastes.

40. More direct support for the satellite DARS applicants' projections can be found by examining digital audio services packaged with video services and delivered via cable or satellite. Two such nationwide subscription services are Digital Music Express (DMX), offered via cable, and the Primestar direct-to-home video satellite service, a DBS service. Those services each began with roughly 30 channels, but have chosen to increase the number of channels to 60. According to CD Radio, both are now expanding again to offer up to 120 channels. The Commission presumes that the satellite DARS applicants would not undertake the risk and expense of implementing satellite systems if the number of channels they propose were not enough to provide a viable service.

41. The satellite DARS applicants calculate that 12.5 MHz of spectrum would be necessary to offer a range of 19 to 44 CD quality audio channels. They contend that 12.5 MHz of spectrum is necessary to support a single viable satellite DARS system. Others commenters disagree. NAB, for instance, proposes that the satellite DARS spectrum be divided into 5 MHz band segments. DSBC and Primosphere counter that NAB's proposed spectrum plan would support a viable satellite DARS system only if at least three or more 5 MHz blocks can be aggregated. AMRC adds that it would be impossible to deliver enough high quality channels in 5 MHz of spectrum to attract a viable audience.

42. A band plan introduced by Cracker Barrel in its reply comments maintains that by using Time Division Multiplexing (TDM) technology, 30 channels of CD quality audio can be accommodated in 8.32 MHz, or 32 channels of CD quality audio could be provided in 8.32 MHz using Code Division Multiplicity (CDM) technology, and thus six operators (presumably six economically viable systems) could be

accommodated in the 50 MHz initially allocated for satellite DARS. Cracker Barrel also contends that if all satellite DARS providers use the same error correction rates, then as many as eight satellite DARS licensees could be accommodated in the 50 MHz (*i.e.*, each with a 6.25 MHz assignment) and each could offer at least 30 channels of CD quality audio. Cracker Barrel contends that its band plan does not require use of regional spot beams or a higher order modulation constellation to gain additional channels per MHz of spectrum. It asserts that by using ⅓ rate or ½ rate FEC as opposed to ¼ rate as originally proposed by CD Radio and Primosphere, the bandwidth requirement for a 32 or 30 channel CD quality system could be reduced from 12.5 MHz to 8.32 MHz and 6.25 MHz respectively.

43. Satellite DARS applicants assert that Cracker Barrel's assumptions used to derive spectrum requirements do not include techniques to overcome multipath fading present in a mobile environment and do not adequately address the associated limitations on satellite power, weight, launcher capacity, international coordination, or system cost. CD Radio asserts that 12.5 MHz of bandwidth is necessary for its satellite DARS system to provide 33 channels of CD quality audio using a spatially diverse architecture, CDM, and ½ rate FEC, which is capable of operating at power flux-density levels that will make coordination with adjacent countries feasible. CD Radio indicates that it has changed to CDM to provide increased resilience to fading and noise. It concedes that, if it did not employ spatial diversity and instead used a single satellite, it would be possible to transmit approximately twice as many channels in a given amount of spectrum. However, CD Radio maintains that spatial diversity is key to providing high quality audio in a mobile environment. CD Radio contends that abandoning the use of spatial diversity would reduce sound quality, increase fading and blockage, and prove commercially unacceptable to its consumers. While the company notes that these problems could be addressed by increasing satellite power significantly, it points out that any such increase would only add to existing coordination difficulties with adjacent countries.

44. Primosphere maintains that, in the case of CDM technology, even though a signal is coded so that it can be selected from the other signals simultaneously sharing the channel, simultaneous channels can interfere with each other when orthogonality is lost. This sets an effective limit on the number of CDM channels that can occupy a given channel. DSBC asserts that reducing the bandwidth from 12.5 MHz to 10 MHz, or to 8.32 MHz as proposed by Cracker Barrel, while maintaining channel capacity would require greater received signal power (at least 40% more) since the primary coding for a 10 MHz system is much less robust in correcting errors than that found in a 12.5 MHz system. An increase in signal power would increase coordination difficulties with adjacent countries and add cost to satellite DARS receivers and space stations.

45. The Commission concludes, based on the current record, that each DARS licensee will require at least 12.5 MHz to successfully implement an economically viable satellite DARS system. The Commission believes that licensing less than 12.5 MHz would be insufficient to provide a critical mass of channels required for economic viability and could lead to significant power and cost constraints. The Commission does not find the contrary assertions by NAB and Cracker Barrel persuasive. Moreover, the applicants' successful efforts to increase the spectrum efficiency of their proposals supports their estimate of 12.5 MHz as the minimum amount of spectrum needed. Comparing the channel and associated spectrum requirements of the applicants' original proposals with their existing comments, the Commission calculates that, on average, the applicants have increased the number of channels they propose to provide by seven, despite an average decrease in proposed spectrum use of 14 MHz. The applicants' efforts to improve their spectrum efficiency should not be treated as a detriment. DARS applicants may participate in the WCS auction to acquire additional spectrum if they desire it.

46. While the Commission recognizes that further technological advances may result in even greater increases in spectrum efficiency, none of the commenters addressing this issue have demonstrated that they can provide a more spectrum efficient, economically viable, high quality DARS system in less than 12.5 MHz and using current state-of-the-art in satellite technology. The above discussion is indicative of the trade-offs between bandwidth and power that satellite DARS applicants have weighed in their choice of transmission schemes and technology. Because each satellite DARS licensee will be limited to a bandwidth of 12.5 MHz, the trade-offs between increased power and channel capacity is particularly critical to overall satellite system design. The Commission will not attempt to impose its judgments in this regard on the satellite DARS licensees and will allow licensees to use the technology, channeling plans, modulation schemes, and multiple entry techniques of their choice within their 12.5 MHz band segment.

47. Based on the recent legislation passed by Congress directing the Commission to reallocate and auction the 2305–2320 MHz and 2345–2360 MHz bands, the Commission is licensing only the 2320–2345 MHz portion of the 2310–2360 satellite DARS band exclusively for satellite DARS. However, before satellite DARS service can be offered to the public, the Commission will require satellite DARS licensees to complete detailed frequency coordination with existing operations in adjacent countries to prevent the potential for unacceptable interference. The goal of the coordination process is to reach agreement with affected users on an operating arrangement which harmonizes the use of the radio frequency spectrum.

48. In the *NPRM*, the Commission discussed potential issues that might arise during coordination of U.S. satellite DARS systems with existing operations in adjacent countries. Based on that the Commission knew then about the relatively large number of fixed Canadian terrestrial stations licensed in the 2310–2320 MHz band and tentatively concluded that the lowest 10 MHz in the 2310–2360 MHz band would be difficult to coordinate for satellite DARS. Indeed, one option in the *NPRM* proposed to license only spectrum above 2320 MHz for satellite DARS ''[t]o alleviate the potentially difficult and lengthy coordination'' posed by the presence of the nearly 200 Canadian terrestrial stations between 2310 and 2320 MHz. This option would seek to avoid requiring one satellite DARS licensee to be subject to coordination with a greater number of fixed terrestrial systems than other licensees. The Commission requested comment on its tentative conclusion.

49. In the *NPRM* the Commission also observed that the upper portion of the 2310–2360 MHz band would likely present other potential obstacles to coordination with adjacent countries. For example, it cited a CD Radio study showing that Canada generally licenses its Mobile Aeronautical Telemetry (MAT) operations between 2350 and 2360 MHz. Despite the operation of MAT above 2350 MHz, however, certain of the satellite DARS applicants maintained that the uppermost spectrum in the DARS band should be assigned to the first licensee that met its

milestone requirements. Based on this proposal, it appeared to the Commission that the satellite DARS applicants did not expect sharing with MAT operations of adjacent countries to be an insurmountable hurdle. The Commission requested specific comment on whether its different assessment was correct. Although the question of whether to reserve the entire S-band (2310–2360 MHz) exclusively for satellite DARS has been determined by the recent Congressional legislation, discussed above, the Commission discusses below terrestrial operations in the S-band that may affect future satellite DARS coordination.

50. The Commission initiated formal negotiations with the Canadian Administration after release of the *NPRM*. The Commission used the information from these recent meetings to re-assess the current operating environment in the 2310–2360 MHz band. In meetings with Canada following release of the *NPRM*, International Bureau staff learned that the number of fixed terrestrial systems in the lower portion of the band has not changed significantly since the Commission accepted satellite DARS applications for filing. However, Canada informed the Commission's staff that Canadian MAT systems are currently licensed and operating at frequencies throughout the S-band from 2329.25–2390 MHz. Upon receipt of this new information from Canada, the Commission forwarded it to the applicants and entered it into the public record so that the applicants' technical experts and others could provide comment.

51. *The Fixed Service.* The applicants recognize that detailed coordination with foreign systems is unavoidable. Coordination between satellite DARS and Fixed Service systems (FS) is required because the power levels at which the applicants propose to operate their systems to achieve sufficient quality service in a mobile environment are higher than the thresholds levels which have triggered on-going bilateral coordination with adjacent countries. Detailed coordination would therefore be necessary with every FS station that is within the satellite DARS transmitting antenna gain contour unless the power levels of the proposed satellite DARS systems is reduced or measures are taken by the fixed terrestrial service to mitigate unacceptable interference from satellite DARS (*e.g.*, re-pointing the receive antenna sufficiently away from the geostationary satellite orbit or upgrading receiver equipment).

52. According to the international allocation, adjacent countries are free to license additional fixed and mobile terrestrial systems on frequencies between 2300–2483.5 MHz. The Commission has confirmed that Canada, alone, has licensed and will continue to license FS systems throughout the 2310–2360 MHz band. Currently, approximately 20% of the total number of systems licensed in Canada are above 2320 MHz.

53. *Mobile Aeronautical Telemetry.* The threshold power levels necessary to protect foreign MAT systems are expected to be similar to the levels which the U.S. has established in the 1435–1525 MHz band (L-band) to safeguard its MAT systems. The U.S. quantified its need to protect its MAT systems from interference in the L-band in detailed studies which it presented to numerous International Telecommunication Union-Radiocommunication Sector Study Groups. These studies show that it would not be feasible for a satellite service to share with MAT on a co-coverage, co-frequency basis. Indeed, the U.S. has taken necessary steps to relocate its own S-band MAT operations to frequencies above 2360 MHz, recognizing that co-frequency, co-coverage operation of satellite DARS and MAT is not practical. Many of these U.S. MAT operations were relocated entirely from S-band to L-band.

54. The Commission now knows that some of the MAT assignments in Canada are used to control remotely piloted vehicles (RPVs) which require reception at the aircraft as well as at land based stations. In addition, some Canadian MAT systems are operating within a hundred miles of the U.S./Canada border, making them even more susceptible to interference from U.S. satellite DARS. Although five of the 12 MAT frequency assignments in Canada lie below 2345 MHz, at least three of those assignments are repeated on center frequencies above 2345 MHz. This may indicate that there is some flexibility in the MAT operations that will help the coordination efforts in the 2320–2345 MHz band.

55. In the *NPRM*, the Commission solicited comment on three pending requests for pioneer's preferences filed by CD Radio, DSBC, and Primosphere. No comments were filed on any of the satellite DARS pioneer's preference requests. On September 20, 1995, in compliance with new pioneer's preference rules, CD Radio, DSBC, and Primosphere each filed a supplement to their respective requests.

56. By letter dated August 30, 1996, the Commission's Office of Engineering and Technology and the International Bureau requested that a specially convened panel of four satellite technology experts (''Panel'') review the three satellite DARS pioneer's preference requests and recommend to the Commission whether each of the requests should be granted. In a report dated November 18, 1996, the Panel unanimously recommended that no pioneer's preference be awarded. The Panel concluded that none of the applicants had demonstrated a seamless satellite DARS service and found that no award of a pioneer's preference could be justified on technical design grounds. On November 19, 1996, the Commission issued a *Public Notice*, Report No. SPB–67, Mimeo No. 70798 requesting comments on the Panel report by December 3, 1996.

57. Following the release of the Panel's report, all three pioneer's preference applicants withdrew their requests. Accordingly, the Commission does not consider whether to award any pioneer's preferences for satellite DARS. While the Commission does not need to discuss the Panel's recommendations and report, the Commission commends the members of the Panel for their remarkable dedication and hard work during the several weeks in which they volunteered their expertise.

58. In light of the withdrawal of each request for pioneer's preference, and having determined that each DARS licensee will require 12.5 MHz, the Commission must now determine whether to reopen the 25 MHz of spectrum that remains allocated primarily for satellite DARS to new applicants or allow only the existing applicants to resolve their mutually exclusive applications. Commenters urging reopening the cutoff for satellite DARS applications contend that it is necessary to ensure true competition and greater program diversity. Cracker Barrel, for example, asserts that it would be interested in filing an application advocating a different transmission technology that it claims will allow more operators in less spectrum. It states that because the cut-off was three years ago, the Commission cannot be sure it has the best proposals before it. It also claims that the satellite DARS proceeding was ''out of order'' because applications were accepted before service rules were established. Because of this situation, Cracker Barrel complains it did not learn of the licensing process until the June 1995 *NPRM* and thus it missed the 1992 cut-off. Cracker Barrel argues that the Commission has discretion under the public interest standard to reopen a cut-off in a given proceeding.

59. Similarly, NAB asserts that technology has changed since the

Commission opened and closed the application window for DARS. It states that licensing multiple applicants will bring more program diversity and more business capabilities to the service. It also argues that any equities favoring the current applicants do not justify preserving the cut-off. NAB, like Cracker Barrel, argues that the available spectrum can support additional operators.

60. Others, particularly the four current applicants, argue that the cut-off should stand. CD Radio asserts that reopening would be unlawful, inequitable, and unwise. It argues that cutoffs are reopened only in extraordinary circumstances that are absent here. CD Radio and AMRC also stress that reopening would ignore the equities favoring the current applicants, including the significant time and money invested to establish satellite DARS. Citizens for a Sound economy, a non-applicant, added that reopening the cut-off could discourage future research and development of new services by allowing new applicants a ''free ride'' on the current applicants' investments.

61. Primosphere argues that cut-offs are key to a successful satellite policy. They bring finality and certainty to satellite proceedings by limiting the universe of applicants, allowing them to prepare their cases against a limited set of opponents and expediting inherently complex and costly development of new services. Similarly, DSBC argues that reopening the cutoff would contravene decades of satellite procedure. It states:

> Unlike its process in other services, the Commission invites applicants for new satellite services to submit their applications prior to the adoption of the technical and operational rules and often prior to a final decision on the threshold question of whether proceeding to authorize any one in the service is in the public interest. The Commission repeatedly has concluded that the technical complexity and the extraordinary lead time required uniquely in the satellite services requires this previously unprecedented approach.

The purpose of this approach, DSBC explains, is to guarantee long-term industry involvement in identifying the best use of spectrum and most efficient technology, thereby expediting new services. DSBC argues that satellite companies invest enormous amounts of time and money to develop new technologies and services, in reliance on the finality and certainty afforded by cutoffs and licensing rounds. Absent cutoffs, these parties would lack the incentive to risk the substantial resources required to develop and offer new satellite services to the public.

62. The Commission agrees with those commenters that assert that the Commission has authority to reopen cut-offs and that doing so in some circumstances has several important advantages, including allowing for new competitors to emerge. But the Commission concludes that in this case, compelling policy reasons unique to satellite services militate against reopening the cut-off for satellite DARS license applications for the two licenses available.

63. Sound satellite licensing policy and precedent, and the equities of this particular proceeding support the use of cut-offs in here. In this satellite proceeding, as in others, applicants require some measure of certainty to justify the inherently long-term investment of resources required by complex and lengthy international allocation and coordination procedures that must be completed prior to inauguration of service. This unique feature of satellite services, combined with the need to most expeditiously provide new services to the public, outweigh any benefits that would accrue from accepting additional applications. Cut-off procedures provide a greater measure of certainty. Given these unique factors in licensing satellite services, the Commission regularly establishes cut-offs, accepts applications and creates processing groups before service rules are adopted or even before specific operating frequencies are established. The Commission then relies heavily on the applicants to help develop service rules that allow them to share spectrum and expeditiously develop and deliver their new services to the public. The Commission relies heavily on applicants to assist the U.S. in international fora to obtain spectrum allocations and expects them to participate in the time consuming process of ITU notification and coordination. All of this activity requires significant expenditure of time and money by the applicants. Once the Commission adopts rules, it will permit applicants to amend their proposals to reflect compromises. This process expedites a complex and inherently risky venture, allowing license applicants to begin construction of their facilities immediately upon the grant of a license. The assertion by those opposing cut-offs that the Commission does not accept applications before adopting service rules in other, very different types of services, does not justify reopening the cut-off in this satellite proceeding.

64. Reopening the cut-off in this case will not necessarily advance DARS technology. There is no reason to assume that applicants will implement outmoded technology or spend hundreds of millions of dollars to construct inefficient satellite systems. Furthermore, in any satellite service rulemaking proceeding, the Commission always gives pending applicants the opportunity to amend their applications to conform to the final rules. In reviewing applications for space station facilities, the Commission requires that proposals reflect ''state-of-the-art'' technology at the time of license grant. In fact, CD Radio had amended its application substantially since 1990 and will have the opportunity to do so again to reflect the adopted rules. Although Cracker Barrel claims that its proposal could use less spectrum than that proposed by CD Radio, the Commission concludes, as discussed previously, that its proposal would not accommodate certain innovations such as spatial diversity.

65. Since CD Radio filed its original application in 1990, steps to implement the service have been well publicized. Both the government and the private sector worked to identify appropriate spectrum for satellite DARS at WARC–92. Shortly after WARC–92, the Commission announced its intention to allocate spectrum domestically and to accept applications for operations in the S-band to be considered in conjunction with CD Radio's. Since 1992, only one entity, Cracker Barrel, has indicated interest in filing an application to provide satellite DARS.

66. Neither Cracker Barrel nor other commenters have presented compelling arguments to justify reopening the previously established cut-off for satellite DARS license applications. No commenter advocating reopening has shown any persuasive reason to depart from the satellite cut-off policy and precedent.

67. Consistent with the conclusion not to reopen the cut-off in this proceeding, the Commission notes that existing Commission rules preclude satellite DARS applicants from effecting a substantial change in beneficial ownership if they want to maintain their pre-cut-off status. Section 25.116 of the rules provides that any amended application substantially changing an applicant's ownership will be considered a newly filed application and thus would not fall within cut-off protection unless the applicant requests and is granted an exemption by the Commission.

68. The Commission proposed in its *NPRM* to authorize specific satellite DARS frequency assignments upon grant of satellite DARS authorizations to begin construction. There were mixed

reactions to its approach. Primosphere, asserts that the Commission should initiate international coordination in conjunction with all licensed satellite DARS systems and should assign specific frequency blocks following the conclusion of this coordination. DSBC proposes to permit licensees to select the frequency band it would like to employ at the time it certifies it has met the first milestone. This is similar to CD Radio's initial proposal that each licensee notify the Commission of the specific frequency assignment it is using at the same time it certifies to the Commission it has met the milestone and launched its first spacecraft. These alternative methods have one commonality; the exclusive frequency assignment for each satellite DARS licensee will not be known before and during the early stages of the coordination process. Indeed, it was necessary to initiate the coordination process with the ITU for each current satellite DARS system as though each system would operate over the entire 2310–2360 MHz band. Until specific frequency assignments are issued, coordination with adjacent countries for each satellite DARS system is burdensome for both the Commission and the licensees.

69. As discussed above, there is sufficient spectrum in the S-band to license only two satellite DARS systems. Dividing the available 25 MHz of spectrum into four equal segments among the four applicants would result in exclusive frequency assignments of only 6.25 MHz for each satellite DARS applicant. Because the Commission has found that a viable and competitive satellite DARS service will require 12.5 MHz, it can license only two systems. The 2320–2345 MHz band that will remain allocated for satellite DARS will be divided into two equal 12.5 MHz segments (2320–2332.5 MHz and 2332.5–2345 MHz). We will award the two licenses for satellite DARS by using competitive bidding to resolve mutual exclusivity. Satellite DARS applicants that are winning bidders will have 30 days following the conclusion of the auction in which to amend their applications to conform with the satellite DARS service rules adopted today.

70. Using the calculation methods provided in the comments, the satellite DARS licensees will be able to provide 19 to 44 channels of CD quality audio per system in the authorized 12.5 MHz of spectrum. Sufficient spectrum is available for two spatially diverse systems. Although the Commission decides not to reopen the processing round for satellite DARS, the Commission is not by its action today excluding all other potential DARS providers. Indeed, it may be possible to lease channels or purchase advertising time from the licensed satellite DARS providers.

71. CD Radio had proposed that satellite DARS system operators be permitted temporarily to occupy frequency assignments other than their own, provided that their transmissions can be reconfigured to return to and thereafter use only their own frequency assignment upon launch of the satellite operated by the licensee assigned to the temporary frequency. DSBC objected to this proposal, arguing that while temporary use by the first operator(s) might avoid having frequencies lie fallow for a short time, prescribing temporary use may be disruptive and contrary to the public interest. It asserted that the temporary operator could be faced with reducing its services, discontinuing its service to its customers, or seeking to utilize frequencies that are rightfully assigned to another licensee once the temporary spectrum is no longer available for use. Primosphere, supports CD Radio's original proposal to authorize interim frequency assignments.

72. Upon review of the record, the Commission has decided not to authorize interim operations. The Commission has concluded that 12.5 MHz is necessary to implement a viable satellite DARS service. Nothing in the comments indicates that additional spectrum, or an interim assignment, is necessary to implement a viable system. Conversely, the Commission finds that an interim assignment could be disruptive and contrary to public interest because of possible service interruption or reduction. The Commission therefore adopts its original proposal not to authorize interim frequency assignments.

73. Although spectrum constraints limit the Commission to licensing just two satellite DARS systems at this time, its licensing approach nonetheless provides the opportunity for a competitive DARS service. The Commission's goal is to create as competitive a market structure as possible, while permitting each DARS provider to offer sufficient channels for a viable service. In the *NPRM*, the Commission pointed out that ''satellite DARS will face competition from terrestrial radio services, CD players in automobiles and homes, and audio services delivered as part of cable and satellite services,'' and asked whether these delivery media, coupled with fewer than four DARS providers, could ensure an effectively competitive audio services market.

74. Other audio delivery media are not, of course, perfect substitutes for satellite DARS. These media and satellite DARS all differ with respect to the programming menu (terrestrial radio can provide local programming and satellite DARS cannot), the sound quality, the cost of equipment, and the presence or absence of a subscription fee, but they all can provide music. The availability of these media, terrestrial radio in particular, varies across populated areas. Given the conclusion that satellite DARS can provide new and valuable service to the public, and given the overall competitive environment within which it will operate, the Commission is satisfied that licensing two satellite DARS providers will serve the public interest. The Commission agrees with commenters, that there should be more than one satellite DARS license awarded. Licensing at least two service providers will help ensure that subscription rates are competitive as well as provide for a diversity of programming voices. The two DARS licensees will compete against each other for satellite DARS customers and will face additional competitive pressure from the other aural delivery media mentioned above. Accordingly, eligible auction participants may acquire only one of the two licenses being auctioned. One license will be for the use of spectrum between 2320 and 2332.5 MHz and the other for 2332.5 though 2345 MHz.

75. Satellite DARS licensees' authority to operate will be conditioned upon completion of their international coordination obligations. As discussed above, and as the Commission indicated in the *NPRM,* both Canada and Mexico have allocated the 1452–1492 MHz frequency band (L-band) for DARS. Since U.S. satellite DARS systems will operate exclusively in the 2320–2345 MHz frequency band (S-band), coordination between U.S. satellite DARS and Digital Audio Broadcasting systems of adjacent countries is not necessary. The Commission indicated in the *NPRM* that the L-band is used extensively for U.S. Government and commercial mobile aeronautical telemetry operations. Coordination between Canadian terrestrial DARS and U.S. mobile aeronautical telemetry systems at L-band has proven to be challenging.

76. Adjacent countries do, as discussed above, operate terrestrial fixed point-to-point, fixed point-to-multipoint, and mobile aeronautical telemetry systems throughout the S-band. U.S. satellite DARS systems will

be required to coordinate with these terrestrial systems currently operating in the 2320–2345 MHz band. Satellite DARS licensees must submit appropriate Appendix 3 material according to the International Radio Regulations to formally complete the international coordination process. This Appendix 3 material will contain the final configurations of the satellite DARS systems.

77. In the *NPRM,* the Commission sought comment on whether satellite DARS licensees should have the flexibility to determine their own regulatory classification depending on the service they are providing or whether there are reasons to justify mandating a particular type of service. The Commission tentatively concluded that there was no reason to require that satellite DARS providers be licensed as common carriers or as broadcasters. The Commission raised a related question, pursuant to a suggestion by the NAB, whether the Commission should require that all licensees offer subscription service and asked for comment on the legal, policy and practical implications of such a requirement.

78. Commenters addressing these questions fall into two general groups. Those supporting implementation of satellite DARS, including the incumbent applicants, advocate that licensees be permitted to determine their own regulatory classification in order to tailor services to meet customer requirements and to respond to market demands. These commenters also emphasize the extremely high costs of constructing and launching a satellite system and state that licensees cannot afford to be restricted to purely subscription service. They state that they must be allowed to choose their own mix of subscription and advertising. One commenter suggests that satellite DARS licensees be limited to national advertising and be prohibited from accepting local or regional ads. Media Access Project argues that satellite DARS should be classified as broadcasting because the providers use public spectrum and thus should be subject to public interest requirements.

79. Commenters opposing satellite DARS argue that the service should be required to operate on a subscription only basis. NAB, for example, states that although satellite DARS would not be common carriage or broadcasting, providers should be required to restrict their service to subscription offerings in order to lessen the potential adverse impact on terrestrial broadcasters. NAB recognizes that DBS operators have been given the option to offer service as a broadcaster or by subscription but argues that treating satellite DARS like DBS in this regard is not warranted because the services operate in different competitive markets, with DBS subject to much more competition and not able to affect broadcasters as significantly as DARS.

80. The record supports a conclusion that satellite DARS licensees should be able to tailor their services to meet customer needs and that mandating a particular regulatory classification is unwarranted. There is no compelling evidence in the record that would militate in favor of requiring a broadcast classification and in fact it appears that the current applicants favor subscription service. Nor does satellite DARS appear to be a common carrier service because much of the programming offered would be subject to the editorial control of the provider. The services proposed by three of the applicants will be neither broadcast or common carrier. Flexibility for licensees to meet market demands is crucial and it may be that the viability of a satellite DARS service will depend on offering a mix of advertiser supported and subscription service. The Commission finds that a requirement that satellite DARS be entirely subscription is unwarranted. Mandating that providers charge for their services is not in the public interest and raises significant legal questions if done for the purpose of economic protectionism as advocated by several commenters.

81. The Commission's *NPRM* requested comment on a wide variety of questions regarding the advisability of public interest obligations in the context of this service. The Commission asked, for example, if all satellite DARS providers, including those not operating as broadcasters, should be subject to similar requirements. The Commission solicited comment on the Commission's authority to impose such obligations on non-broadcasters. The Commission requested information on the cost of complying with public interest obligations, and on whether the costs could be so significant as to hamper implementation of the service. Finally, the Commission asked about the types of obligations that apply to terrestrial broadcasters, which offerings would not be included by service providers in an unregulated environment, and whether these requirements increased or decreased profitability.

82. Commenters were divided on whether the Commission should adopt public interest programming obligations for satellite DARS providers. In general, pending satellite DARS applicants proposing non-broadcast service cautioned against imposing obligations. For example, DSBC states that public interest programming obligations are not necessary to ensure diverse public oriented programming. It asserts that the economic and distribution structure of satellite DARS makes it good business to offer programming that regular broadcasters would not offer absent incentives. AMRC also expresses concern that many of the suggested service rules would not result in better service to the public but instead would make service impossible. Primosphere, the only applicant clearly proposing to operate as a broadcaster, states the Commission should strike a balance between ensuring that the public interest is served and assuring that timely introduction of service is not impeded. A non-applicant states that the Commission is not in a position to determine which services should be offered in light of rapidly changing technology and potential consumer services. Although arguing against mandatory offerings, many of the current applicants state that they plan to include public interest programming in their services.

83. Media Access Project (''MAP'') urges that the Commission classify satellite DARS as broadcasting to trigger defined statutory public service obligations. In the absence of such a classification, MAP argues that broadcasters' obligations are appropriate. NAB states that imposing public interest obligations on DARS providers will, to some extent, compensate for the loss in local programming that it claims will inevitably result from implementing the service. Individual broadcasters assert that DARS providers will not keep their promises to provide niche programming but instead will offer mainstream services that will compete directly with terrestrial offerings.

84. In response to the request for proposals for possible public service rules, NAB suggested that satellite DARS licensees be held to a ''promises v. performance'' standard, similar to that formerly required of terrestrial broadcasters. Under this concept, operators would provide the Commission with a list of programming they propose to offer and to specifically describe ethnic or niche offerings included. They would then be subject to a periodic public interest review to determine if they have made good on their promises and to justify any substantial variations from their proposals.

85. Bonneville International Corp., a company holding broadcast licenses, advocates requiring that music

programmed channels carry news, information, public service announcements and public service programming. Several commenters urge that satellite DARS providers be required to comply with Equal Employment Opportunity requirements. National Public Radio advocates either a specific reservation of channel capacity for noncommercial or educational programming or a commitment to provide a minimum amount of educational cultural, and informational programming to unserved or underserved areas. The suggestion is supported by the Minority Media and Telecommunications Council which states that satellite DARS licensees should be required to set aside channels for noncommercial public access and for minority entrepreneurial access. One commenter, a terrestrial radio station operator advocated that satellite DARS meet certain requirements for each different programming signal offered and for each different community served. NAB points out that there are certain types of local public interest programming that a national service like satellite DARS can neither provide nor replace. Entertainment Communications advocates a requirement that satellite DARS licensees serve ''niche'' audiences.

86. As explained above, in allocating spectrum and adopting service rules for the satellite DARS service, the Commission has relied on the representations of satellite DARS applicants that they will provide audio programming to audiences that may be unserved or underserved by currently available audio programming. Thus, applicants have proposed new choices in audio programming which may be beneficial for the mobile public and for unserved and underserved communities, particularly in rural or remote areas. The Commission also has considered whether it is appropriate to apply to DARS public interest requirements similar or analogous to those that govern terrestrial radio broadcasters.

87. With regard to non-programming obligations, the Commission concludes that satellite DARS licensees must comply with the Commission's equal employment opportunity requirements. The rationale behind these requirements is a belief that a licensee can better fulfill the needs of the community, whether local or national, if it makes an effort to hire a diverse staff, including minorities and women. This rationale applies with equal force to satellite DARS. The Commission notes that no commenters opposed the imposition of EEO requirements. The Commission has a pending rulemaking proposing revision to its EEO rules. Licensees in this service will be required to comply with the current rule and with any changes adopted when the rulemaking is completed.

88. With regard to programming obligations, the Commission agrees with some of the commenters that satellite DARS service is likely to provide a new forum for political debate in this country. To ensure that there is fair treatment of federal political candidates that may seek to use this new forum, the Commission believes that satellite DARS licensees, whether they operate on a broadcast or subscription basis, should comply with the same substantive political debate provisions as broadcasters. These provisions are the federal candidate access provision, Section 312(a)(7), and the equal opportunities provision, Section 315. As the Supreme Court stated in upholding Section 312(a)(7) against constitutional attack, these political broadcast provisions ''make a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process.''

89. While the Commission is not adopting additional public interest programming obligations at this time, it reserves the right to do so. Licensees are specifically on notice that the Commission may adopt public interest requirements at a later date. If additional public interest obligations are found to be warranted, one option would be to adopt rules similar to those Congress enacted for DBS providers, including a 4–7% set-aside of capacity for noncommercial educational and informational programming. Another option would be to hold satellite DARS licensees to a 'promise vs. performance' standard.

90. In the *NPRM*, the Commission discussed the possibility of satellite DARS providers offering non-DARS, or ancillary, services. The Commission sought comment on what restrictions, if any, should apply to such services and on how to monitor compliance with any restrictions. In response, commenters favored allowing provision of ancillary services. Current satellite DARS applicants urged that the Commission allow flexibility to provide such services. Other commenters stated that allowing ancillary services will promote full and efficient use of the spectrum and could lower the price of DARS service, particularly in the early stages as satellite DARS is established.

91. Some commenters suggested particular services that would be complementary. For example, Ford Motor Co. suggested allowing data services. Radio Order Corp. urges the Commission to allow song related voice messaging that would permit the listener to access information on a particular song during the uninterrupted music. The USDA/Forest Service National Weather Program suggests that satellite DARS providers could dedicate a channel to broadcasting potentially life-saving forest fire and emergency information.

92. The applicants have proposed a mix of ancillary services. The Commission agrees with the commenters who argue that allowing flexibility consistent with the allocation will allow providers to tailor service offerings to meet consumer needs. Because the United States successfully obtained an international allocation for satellite DARS at WARC–92, the Commission would be concerned about any use of the spectrum that is inconsistent with the international allocation.

93. The *NPRM* contained no specific proposal for satellite DARS service area requirements. It did, however, ask whether to require satellite DARS systems to provide 50-state coverage or 50-state plus Puerto Rico/Virgin Islands coverage, as the Commission does in the fixed-satellite service. The Commission noted that two satellite DARS applications propose service solely to the 48 contiguous states of the United States (CONUS). Two other applicants propose coverage of the CONUS, Alaska, Hawaii, Puerto Rico and the Virgin Islands.

94. CD Radio and Primosphere assert that the Commission should not mandate that first generation satellite DARS systems provide service beyond the CONUS. Primosphere adds that requiring full 50-state coverage would require the use of satellite spot beams and additional spacecraft power. Primosphere also noted that most 12–14 GHz (Ku-band) and DBS licensees provide CONUS only coverage. CD Radio asserted that the service area is market-driven and that other applicants propose to serve Alaska, Hawaii, Puerto Rico, and the Virgin Islands CD Radio indicates also that its second generation design will include an expanded service area.

95. One benefit of a satellite system is its ability to provide nation-wide service. The Commission recognizes that 50-state coverage is not mandatory for all satellite services and a service area requirement beyond full CONUS coverage may not be practical for first generation satellite DARS systems. All of the pending applications for satellite

DARS propose at least full CONUS coverage, however, and there appears to be support for such a minimum requirement. Accordingly, the Commission concludes that satellite DARS licensees' systems must provide, at a minimum, full CONUS coverage. The Commission strongly encourages coverage to other areas or territories of the United States where practical to do so for first generation systems.

96. A concern identified in the *NPRM* was that satellite DARS signals be available to listeners, especially mobile ones, at every location nationwide. The Commission noted the service link margin is related to the percentage of service availability. The Commission also noted that there was significant comment on the pending satellite DARS applications which questioned the appropriate service link margin necessary for reception in a mobile environment. The Commission therefore proposed in the *NPRM* that satellite DARS applicants be required to identify the service link margin for their systems and demonstrate that their systems are capable of providing that service link margin in a mobile environment, under clear sky conditions, to the geographic areas they will serve. The Commission also sought comment on whether a specific value should be used to define an adequate service link margin for the specified service areas in urban and suburban environments and, if so, what that value is and analysis to support that value. Technical analyses were not included in initial comments to demonstrate that a particular service link margin would be necessary for mobile reception in urban and suburban environments.

97. Pending applicants assert that satellite DARS operators will have an incentive to provide sufficient margin to deliver the highest quality audio and still permit low-cost manufacture of receiver equipment. Noting also that the amount of service link margin chosen by satellite operators is affected by a variety of factors, such as use of modulation and access techniques, satellite diversity, transmission schemes, intended audience, and use of terrestrial repeaters, it would be difficult for satellite operators to define one specific value that should be used. The Commission therefore will not require that satellite DARS licensees be capable of providing a specific value of service link margin for a given geographic area and withdraws its proposal regarding service link margin. The Commission will only require satellite DARS applicants to provide the information on their service link budgets that is already required by Section 25.114(c)(9) of its rules.

98. In general, it is the Commission's policy to avoid mandating the use of one form of technology. The Commission concludes it is appropriate to follow that policy here because it will allow flexibility for satellite DARS licensees in designing their satellite DARS systems, and will promote innovative system designs. Indeed, in the *NPRM,* the Commission proposed to allow licensees to use the channelling plans, modulation schemes and multiple entry techniques of their choice. One of the underlying reasons for proposing a band segment approach to licensing the satellite DARS spectrum was to avoid imposing complex sharing arrangements among satellite DARS licensees that may result due to the diversity in the proposed satellite DARS designs. The diverse modulation and channelling techniques proposed in the pending satellite DARS applications, however, led it to seek comment in the *NPRM* on the issue of receiver inter-operability and standards for satellite and terrestrial DARS.

99. The Commission indicated its concern that licensing diverse satellite DARS systems could increase the cost of manufacturing a receiver that is compatible with all competing satellite DARS technologies and terrestrial formats. The Commission therefore proposed that each applicant demonstrate that its satellite DARS system is capable of remotely tuning its individual mobile, fixed, and/or portable receivers across the allocated bandwidth 2310–2360 MHz. This rule would have been necessary if the Commission were to license more than one band segment to a particular satellite DARS licensee, (whether as an interim assignment or in the event that a license is dismissed and the spectrum is re-divided pro-rata) but in view of its conclusion to license only two satellite DARS systems through competitive bidding, and not to permit interim frequency assignments, such a provision is no longer required. The Commission adopts, however, the principle behind the proposed rule that satellite DARS licensees are required to design a receiver which would accommodate all satellite DARS providers. By promoting receiver inter-operability for satellite DARS, the Commission is encouraging consumer investment in satellite DARS equipment and creating the economies of scale necessary to make satellite DARS receiving equipment affordable. This rule also will promote competition by reducing transaction costs and enhancing consumers' ability to switch between competing DARS providers. The Commission declines to adopt a specific standard for satellite DARS receiver designs, though. This will allow licensees the flexibility to determine the most cost effective way to meet the receiver-interoperability requirements. The Commission does not mandate that satellite DARS receivers be capable of receiving terrestrial broadcasting formats. Terrestrial and satellite DARS are at different developmental stages and the Commission does not want to impede implementation of either service.

100. Parties contend that Commission adoption of a single, industry-developed transmission standard for satellite DARS will keep receiver costs down, minimize design complexity, and encourage competition in the marketing of receivers. The Electronic Industry Association (EIA) maintains further that satellite DARS receivers should be designed so that consumers can seamlessly switch between satellite and terrestrial based DARS systems.

101. Satellite DARS applicants share different views regarding the Commission's role in the process of receiver development. CD Radio asserts that receiver inter-operability is in the clear economic interests of all satellite DARS providers and it expects that its receiver will be fully tunable in the sense that the consumer can select the service provider of their choice. AMRC contends that creation of a common receiver capable of tuning in the entire DARS band is important in promoting consumer acceptance of the technology. Given the market incentive for receiver compatibility, DSBC asserts that it is likely that a compatible receiver standard for satellite DARS will be developed without regulatory intervention. Primosphere adds that it is committed to working with the appropriate industry organizations to develop a common receiver standard and therefore Commission action is not necessary. In a related matter, CD Radio seeks confirmation from the Commission that consumers may rely on the authorization of a satellite DARS provider and need not obtain any additional license or registration for receive-only earth stations used to obtain the service.

102. As an alternative to this Commission mandating standards the Commission will require that a satellite DARS applicant, in its application, certify that its satellite DARS system will include a receiver design that will permit users to access all licensed DARS systems that are operational or under construction. Satellite DARS licensees, during the construction of their satellite systems, will have an opportunity to

work among themselves toward a final receiver design. The Commission agrees with commenters that it is in the interest of the satellite DARS licensees, and consumers, for the licensees to come to agreement on a single DARS receiver design. The Commission also agrees with commenters that, alternatively, a single transmission standard would be in the interest of the satellite DARS providers and consumers, independent of whether it is developed by the Commission or by industry, but it will not mandate use of a certain technology. If satellite DARS licensees redesign their systems to use conforming transmission technology, receiver complexity would be minimized and receiver costs would be lowered correspondingly. The Commission believes that, at the very least, consumers should be able to access the services from all licensed satellite DARS systems and the rule on receiver inter-operability accomplishes this. The Commission also agrees with CD Radio that it is unnecessary for satellite DARS consumers to file for a license for their receive-only terminals. Indeed, the Commission has not licensed receive-only earth stations for years in an effort to deregulate such operations.

103. Terrestrial broadcast and satellite DARS services are at different stages of development, however, and the Commission does not intend to add delay to the progress of the satellite service with further regulatory intervention by requiring that receivers be tunable to terrestrial broadcast signals. Testing and evaluation of proposed digital audio radio technologies has been on-going since 1991. The Commission urges satellite DARS licensees to take this information into account before they finalize their system and receiver designs. The comments indicate that satellite DARS licensees will continue to participate in the industry groups related to their service and the Commission has good reason to believe that this is sufficient to facilitate the design of a state-of-the-art satellite DARS receiver.

104. The applicants propose various coding rates to produce near compact disc (CD) quality audio. Some applicants propose to use variable data rates to transmit a mix of audio formats where the bandwidth necessary to produce one CD quality channel, for example, would be used to provide several high quality channels at data rates which are lower than those necessary to produce CD quality. The Commission tentatively concluded that the use of variable data rates would promote efficient use of the spectrum and that satellite DARS licensees should be permitted to implement a mix of programming formats at variable data rates. The Commission reflected this in its proposal to require satellite DARS licensees to identify which coding scheme and coding rate(s) they plan to implement on their satellite DARS systems and require those satellite DARS systems which intend to offer audio formats other than CD quality to be capable of transmitting lower quality audio at lower data rates. The Commission proposed to refrain from requiring a particular level of audio quality or other quality for satellite DARS and sought comment on its tentative conclusions. The Commission adopts, today, a rule that is consistent with its proposal for variable data rates.

105. Comments generally support the Commission proposal to allow use of variable data rates depending on the programming being offered and not to define a particular level of quality for DARS based on data rates. CD Radio asserts that satellite DARS licensees should be permitted to rely on market preferences to determine the data rates to use for particular formats and to determine the quality of the service. AMRC agrees with the Commission proposal because it intends to include some non-CD quality channels in its system. In this respect, CD Radio proposed a modification to the original proposal that would require a satellite DARS applicant to identify the compression rate it will use to transmit audio programming whether CD or other quality. The Commission adopts this proposal and extend it to require licensees to identify the compression rates used for non-audio formats.

106. In the *NPRM,* the Commission proposed to adopt financial qualifications and milestone requirements for satellite DARS licensees. Because of the decision to auction licenses, financial qualifications are unnecessary. However, the Commission believes that strict adherence to satellite construction and operational milestones will assure that licensees are proceeding with their proposals and spectrum is used efficiently. Because of the long lead time necessary for satellite construction, the Commission proposed that satellite DARS licensees begin construction of their space stations within one year, launch and begin operating their first satellite within four years, and begin operating their entire system within six years. The Commission also proposed that licensees file annual reports on the status of their systems. The current applicants support the rules proposed in the *NPRM.* Accordingly, the Commission adopts the requirements as proposed.

107. In the *NPRM,* the Commission proposed that licenses for satellite DARS space segment facilities would be issued for ten years. The Commission also noted that licensees choosing to operate as broadcasters would be limited by statute to a shorter term. Adoption of the original proposal would place DARS licensees that choose to be broadcasters at a disadvantage by giving them a shorter term. In addition, two different terms could cause confusion if an operator decided to change the mix of services it offered and might hamper the flexibility the Commission intended that licensees should have in choosing formats. Accordingly, because the Communications Act limits broadcast license terms to eight years, the Commission has determined that all satellite DARS license terms should be eight years. The license term will commence when each satellite is launched and put into operation. In addition, as proposed in the NPRM, individual satellite DARS receivers will not be licensed.

108. As one of the pending satellite DARS applicants indicates, satellite systems are a collection of technical trade-offs between satellite power, number of channels, data rates, service link margin and bandwidth. Therefore, the greater the flexibility in the Commission's technical rules, the greater the flexibility satellite DARS licensees will have in designing their systems in such a way as to meet their business plans and marketing goals. The technical rules adopted today will offer satellite DARS licensees sufficient flexibility to make necessary trade-offs and to implement systems that are viable and competitive.

109. The Commission proposed in the *NPRM* not to apply power flux-density (pfd) limits on satellite DARS networks and it believes the record supports its tentative decision. While initially CD Radio maintained that coordination of satellite DARS systems with adjacent countries would be facilitated if all systems were required to meet a pfd level at the Earth's surface of -139 dB(W/m^2/4 kHz), CD Radio now contends that it is not necessary for the Commission to re-open the issue of required pfd limits since it will be part of the coordination process. Others agree. DSBC, for instance, maintains that experience has shown that the flexibility in the international coordination process is far superior to the rigidity of pfd limits. Accordingly, Satellite DARS licenses will be conditioned on the completion of

international coordination with adjacent countries.

110. It is clear that each satellite DARS licensee will need to operate its satellite(s) at a pfd level that is high enough to provide sufficient service availability and yet low enough to coordinate with terrestrial services in adjacent countries. Coordination with adjacent countries becomes an important issue because the pfd values characteristic of proposed satellite DARS systems exceed the threshold levels that have been identified by foreign administrations to protect their existing terrestrial services. The discussion of coordination, above, provides satellite DARS applicants with a detailed understanding of the coordination issues in the 2320–2345 MHz band. The applicants are in a better position than the Commission to make necessary power trade-offs to implement their satellite DARS systems. Moreover, since the Commission is licensing satellite DARS providers in two separate frequency assignments, the failure of one licensee to complete coordination with adjacent countries in a timely fashion will not delay the coordination of the other licensee's system. In light of the above, adoption of a specific pfd limit is unnecessary. Satellite DARS applicants are reminded, however, that they are required to identify in their modified satellite DARS system applications the pfd at the Earth's surface from their spacecraft according to Section 25.114(c)(11) of the Commission's rules.

111. Satellite licensees are required to suppress out-of-band and spurious emissions from their space stations to the levels specified in Section 25.202(f) of the Commission's Rules. The Commission indicated in the *NPRM* that techniques such as spectral shaping, coding, offset quadraphase modulation and filtering, would be useful in mitigating out-of-band emissions. The Commission sought comment, however, on whether the out-of-band emission limits in Section 25.202(f) would be sufficient to protect radiocommunication services in bands adjacent to the 2310–2360 MHz band, particularly deep space operations below 2310 MHz and U.S. MAT operations above 2360 MHz.

112. Cornell University asserts in its comments that the Arecibo Observatory in Puerto Rico, which it operates for the National Science Foundation in the 2370–2390 MHz band, would require greater protection from satellite DARS than that which is currently required by Section 25.202(f). Specifically, Cornell requests that, as a minimum, the Commission require the out-of-band emission limits of Section 25.202(f)(3) for satellite DARS emissions beyond the 2370 MHz band edge. It requests that a rule for spurious emissions, consistent with those being considered by ITU–R Task Group 1/3 be applied to satellite DARS as well. This would require an additional 9 dB of attenuation below the out-of-band emission limits required by Section 25.202(f).

113. Cornell's calculations assume that a satellite DARS licensee will be authorized to operate at a center frequency of 2355 MHz with a bandwidth of 8 MHz. Considering that satellite DARS systems will be licensed below 2345 MHz, and that the Commission is not requiring the provision of satellite DARS to Puerto Rico and the Virgin Islands, which offers further protection to the Arecibo Observatory, attenuation of out-of-band emissions beyond the limits already required by Section 25.202(f) may not be necessary. It would be premature for the Commission to require satellite DARS licensees to meet the spurious emission limits which are currently in place as ''design guidelines'' and which may be reviewed again by ITU-R Study Groups. The TG 1/3 Recommendation that Cornell cites in its comments is a draft Recommendation and the issue of spurious emissions will not be finalized until the 1999 international Radiocommunication Assembly.

114. The Commission therefore will only require satellite DARS licensees to meet out-of-band and spurious emission limits which are contained in Section 25.202(f) of the Commission's Rules. Satellite DARS licensees should, however, take cognizance of the TG 1/3 ''design guidelines'' and the Arecibo deep space operations in the 2370–2390 MHz when designing, constructing and operating their space stations. In a related matter, the pending satellite DARS applicants assert that they can each operate without causing harmful interference to one another. Since the pending satellite DARS applicants propose a band segment licensing approach, the Commission presumes that the out-of-band emission limits of Section 25.202(f) would provide for interference-free, *intra*-service satellite DARS operation. The issue of out-of-band emission limits to protect satellite DARS receivers is addressed in the Wireless Communication Services proceeding.

115. The Commission sought comment in the *NPRM* on a suitable location for satellite DARS telemetry beacons. The Commission proposed in the *NPRM* that each system operator reduce its bandwidth occupancy by 0.1 MHz to create two 0.2 MHz assignments adjacent to the edges of the satellite DARS band for location of telemetry beacons. The Commission also proposed an alternative location for all satellite DARS telemetry beacons at the lower edge of the 2310–2360 MHz band, considering the tentative conclusion not to immediately license the lower 10 MHz for satellite DARS. The alternative proposal would put fewer constraints on the satellite DARS licensees (*i.e.*, they would no longer have to reduce their bandwidth occupancy to accommodate telemetry beacons), but the Commission indicated that further constraints would be placed on any future licensee of the lower portion of the band. The Commission requested comment on its proposals for satellite DARS telemetry beacons and it requested comment on alternative locations.

116. In its comments, DSBC suggests that, alternatively, the 3697–3699 MHz band would be suitable for satellite DARS telemetry beacons. It contends that the 3697–3699 MHz band could readily be coordinated for satellite DARS telemetry beacons thereby retaining the total DARS band for service links. CD Radio, in its comments, proposes a modification to the satellite DARS telemetry beacon proposal in the *NPRM*. According to CD Radio's proposal, satellite DARS licensees *may* reduce their assigned bandwidth occupancy to provide telemetry beacons. No other alternatives were identified for the location of satellite DARS telemetry beacons.

117. The Commission adopts its original proposal to locate telemetry beacons for satellite DARS in the satellite DARS band, with minor modification. No parties supported the proposal made by DSBC. Further, DSBC provided no supporting information in its comments to assess the impact of satellite DARS telemetry beacons in the 3697–3699 MHz band on the Radiolocation and Aeronautical Radionavigation users of the band. DSBC indicates that Intelsat and Inmarsat and numerous other non-U.S. satellite systems make use of all or large portions of this band. These satellite systems, however, are not located in the geostationary orbit between 80° and 110'' W.L., where the satellite DARS applicants propose to locate their satellites. CD Radio, on the other hand, supports the operation of satellite DARS telemetry beacons within the satellite DARS service link spectrum. CD Radio's proposal is more flexible than the proposal in the *NPRM* because it does not mandate an amount of spectrum by which each satellite DARS licensee must reduce its bandwidth to accommodate telemetry beacons (*i.e.*,

0.1 MHz). The Commission therefore modifies its original proposal to require satellite DARS licensees to accommodate telemetry beacons for their systems within their exclusively licensed bandwidth but allow each licensee the flexibility to determine the appropriate amount of spectrum necessary for its telemetry beacons.

118. Cross polarized signals are orthogonal signals as seen by the receiver. This technique is used extensively in the fixed-satellite service because it facilitates reuse of frequencies to accommodate multiple signals, thereby promoting efficient use of the spectrum. In the *NPRM* the Commission indicated that the record was insufficient for it to analyze the benefits of potential capacity increases, if any, that may result from use of cross-polarized transmissions for satellite DARS. The Commission proposed, however, that satellite DARS licensees be permitted to reach agreement with other satellite DARS licensees to transmit on cross-polarized frequencies in frequency assignments of other licensees. The parties who reach such agreements would be required to apply to the Commission for approval of the agreement. Commission approval would be conditioned on the outcome of coordination with other administrations.

119. The satellite DARS applicants generally support this proposal. CD Radio asserts that a licensee should at least be permitted to transmit cross-polarized signals within its own frequency assignment. AMRC contends that the use of cross polarization techniques is still untested in the S-band and the availability of such techniques for DARS licensees should not be assumed. However, to the extent that cross polarization techniques become feasible, the Commission should allow its use to expand program offerings. The Commission believes that its proposed rule for cross polarization leaves open the possibility for satellite DARS operators to use this technique, when proven feasible, to meet future market demands for their service. The Commission received no comment in opposition to its proposal for use of cross-polarized frequencies and it adopts its original proposal, without modification.

120. In the *NPRM* the Commission indicated that modification to Part 87 of its rules (Aviation Services) would be consequential to the licensing of satellite DARS systems in the 2310–2360 MHz band. The Commission recognized that the mobile and radiolocation services are currently allocated on a primary basis in the 2310–2360 MHz band until January 1, 1997 or until the first broadcasting-satellite (sound) system is operating and affecting or be affected by the mobile and radiolocation services in those service areas, whichever date is later. Further, its *Allocation Order* warned that the BSS(sound) and complementary terrestrial broadcasting service, during their implementation, should take cognizance of the expendable and reusable launch vehicle frequencies 2312.5, 2332.5 and 2352.5 MHz to minimize the impact on this mobile service use to the extent possible.

121. The Commission proposed modification of Section 87.303, in Appendix II of the *NPRM*, to align Part 87 with Parts 2 and 25 of its Rules. The Commission recommended authorization of new primary assignments for mobile telemetry and telecommand operations, pursuant to Section 87.303, above 2360 MHz. The *NPRM* indicated that there was support from the aeronautical community to reaccommodate existing aeronautical telemetry users of the 2310–2390 MHz band to the 2360–2390 MHz band. The Commission proposed modification to Section 87.303 to assign telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles above 2360 MHz. Moreover, the Commission suggested that any other telemetry use of the band 2310–2390 MHz would be secondary to launch vehicle use.

122. As discussed, *supra*, co-frequency, co-coverage operation of satellite DARS and MAT is not possible and it would not be practical to license MAT systems in the satellite DARS band on a co-primary basis. There was no opposition to the proposal to modify Section 87.303. Only DSBC and AFTRCC commented with modifications to the proposal to clarify the status of telemetry use of the 2310–2390 MHz band. Consistent with its original proposal, footnote US328 to Part 2 of the Rules, and the developments in the remainder of the 2310–2360 MHz band, the Commission modifies Section 87.303 as it pertains to the 2320–2345 MHz band. The Commission therefore adopts the modified Section 87.303 contained below.

123. In addition to satellite DARS space stations providing service downlinks in the 2320–2345 MHz band, feeder link earth stations for each satellite DARS system will be required to uplink programming information to the space station(s). The Commission recognized in the *NPRM* that feeder link networks are essential to deliver service to the end user and that ample contiguous spectrum is necessary to implement a viable satellite DARS system. The Commission also recognized that satellite DARS feeder link earth stations will be few in number (*i.e.* one, or possibly two for redundancy, per licensee) and will operate at fixed locations. Therefore, the Commission will authorize satellite DARS feeder link networks in fixed-satellite service (FSS) frequency allocations.

124. The Commission indicated, however, that it would not authorize satellite DARS feeder link networks in the conventional FSS 4/6 GHz (C-band) and 12/14 GHz (Ku-band) frequency bands which are already congested with U.S. fixed-satellite service networks. The Commission tentatively concluded that this would not be an efficient use of the FSS spectrum or the geostationary orbit. Additionally, the Commission recognized in the *NPRM* that the pending satellite DARS applicants propose feeder link operations in FSS bands other than the conventional 4/6 and 12/14 GHz bands. This is consistent with its tentative conclusion. Moreover, the Commission understands that feeder link requirements for each satellite DARS system may increase or decrease depending on the amount of satellite DARS service link spectrum that is exclusively licensed to each applicant, and on the final configuration of the satellite DARS systems. For these reasons the Commission sought comment on possible alternative non-congested FSS frequency bands that would be suitable for satellite DARS feeder link operations in the event that the frequency bands originally proposed by the applicants are not available.

125. Licensing service link spectrum in the 2320–2345 MHz band without designating spectrum for feeder link networks would result in the Commission licensing an incomplete satellite DARS system. The satellite DARS systems cannot operate without sufficient feeder link spectrum. The Commission therefore will permit satellite DARS feeder link networks in the FSS frequency bands 7025–7075 MHz and 6725–7025 MHz (101° W.L. orbital location only), consistent with the requirements identified in the current applications. The Commission will license satellite DARS feeder link Earth stations according to existing regulations for FSS Earth stations.

126. According to the proposals in the pending applications, the feeder link spectrum requirements for three of the four applicants can be accommodated in the 7025–7075 MHz band. Since satellite DARS systems will be operating space stations in the geostationary orbit,

this 50 MHz of spectrum can be reused by satellite DARS licensees in the uplink direction, given sufficient orbital separation between the space stations. The Commission believes that an orbital separation of at least two degrees between satellite DARS space stations is obtainable. Primosphere and CD Radio propose in their applications to use the 7025–7075 MHz band. Though AMRC proposes to use the 6530–6545 MHz band for its feeder links, it proposed no alternative bands. The Commission believes that AMRC's feeder link spectrum requirements, too, can be accommodated in the 7025–7075 MHz band.

127. The fourth applicant, DSBC, proposes in its application to use the 6500–6855 MHz band for its feeder links. DSBC has a greater spectrum requirement than the other applicants because it proposes a system which uses multiple spot beams. Spot beams allow for greater frequency reuse of the service link spectrum but the amount of feeder link spectrum required is proportionately greater. The Commission notes also that DSBC has requested the 101° W.L. orbital position which is allocated to the U.S. in accordance with the international FSS allotment plan. The spectrum in the 6725–7025 MHz allotment band is contiguous with the 7025–7075 MHz band. By combining the 300 MHz of spectrum from the allotment plan with the 50 MHz between 7025–7075 MHz, 350 MHz of spectrum could be available to implement a satellite DARS system at 101° W.L. which uses a multiple spot beam configuration. Moreover, this proposal would be a more efficient use of the FSS allotment plan by using it to its fullest.

128. The 6725–7025 MHz allotment and 7025–7075 MHz bands are currently lightly used in the U.S. by the fixed-satellite service, in contrast to the conventional 4/6 GHz and 12/14 GHz bands. Indeed, the WRC–95 designated these frequency bands for NGSO MSS feeder link use because, globally, they are currently lightly used by the FSS. Though NGSO MSS feeder link networks are planned to operate in these frequency bands and these bands are used in the U.S. for broadcast auxiliary and Electronic News Gathering (ENG), the Commission believes, for the reasons stated herein, that satellite DARS feeder links can share the 6725–7025 MHz allotment and 7025–7075 MHz bands with existing and planned co-primary users.

129. Regarding the sharing situation in the U.S. with broadcast auxiliary and ENG use of the bands, the Commission identified in the *NPRM* the sharing issues that satellite DARS operators would have to address. Initially, commenters maintained that bands allocated for broadcast auxiliary are heavily used for ENG, inter-city relays and studio-to-transmitter links, and that use of the 7 GHz band for satellite DARS feeder link operations would not be feasible. Joint Comments from broadcasters assert, however, that satellite DARS feeder links could share the 7 GHz band with broadcast operations under certain conditions. The National Association of Broadcasters (NAB) maintains that satellite DARS feeder link use of the 7 GHz band would be possible only in small markets, noting that ENG may move from the 2 GHz band to the 7 GHz band thereby crowding the 7 GHz band. CD Radio contends that, even in light of the mobile nature of ENG operations in the 7 GHz band, a carefully engineered and coordinated satellite DARS uplink may well be able to co-exist with these broadcast facilities.

130. Most of the conditions for sharing the 7 GHz band identified by the broadcasters in their Joint Comments are typically negotiated during the domestic licensing process between satellite licensees and broadcasters. The results of this domestic coordination would be reflected in the satellite DARS earth station application to demonstrate that Earth station operations would not affect other co-primary users of the band. Satellite DARS feeder link networks will be authorized as a fixed-satellite service in the 6725–7025 MHz allotment and 7025–7075 MHz bands on a co-primary basis, but Earth station operations are expected to be coordinated with pre-existing users of the spectrum before they will be licensed to operate. The Commission will authorize satellite DARS feeder link Earth stations only after the applicant demonstrates that coordination with potentially affected users in the band, including co-primary broadcast users, has been successfully completed.

131. Certain of the conditions proposed by the broadcasters would not be imposed on satellite DARS operators after the earth station licensing process is completed. For instance, satellite DARS feeder links would not be required to accept interference received from existing and planned TV broadcast auxiliary stations once the earth stations are licensed. Moreover it would be premature for the Commission to identify and adopt ''keep out zones'' for satellite DARS earth stations, for example in areas near major sporting arenas and around existing 7 GHz television broadcast auxiliary receive sites, as proposed by broadcasters in their comments. This detailed frequency coordination exercise will be conducted between the satellite DARS licensees and broadcasters during the domestic licensing process and in parallel with the construction and deployment of the satellite DARS systems. Nevertheless, the fact that the Joint Commenters identified conditions that would facilitate sharing in the 7 GHz band is an indication that a workable solution can be realized for satellite DARS feeder link networks to operate in the bands shared with broadcast facilities.

132. The Commission also identified the sharing issues regarding satellite DARS feeder links and planned feeder link networks for NGSO MSS systems in the *NPRM*. NGSO MSS feeder link networks will be transmitting in the downlink direction in the 7 GHz band while satellite DARS feeder links will be transmitting in the uplink direction in the same band (i.e., NGSO MSS feeder links will be operating ''reverse band''). Coordination between the transmitting satellite DARS earth stations and receiving NGSO MSS feeder link earth stations, and between receiving DARS space stations and transmitting NGSO MSS space stations is therefore required. Primosphere asserts that because satellite DARS feeder link earth stations do not have significant geographic limitations on where they can be located, it is not expected that coordinated use of the 7 GHz band with NGSO MSS feeder link earth stations will be difficult. DSBC adds that there are no apparent problems with satellite DARS feeder link band proposals even in light of WRC–95 proposals for NGSO MSS feeder links.

133. Loral Qualcomm Partnership (LQP) asserts that any satellite DARS feeder link assignment in the 7 GHz band should be required to operate within the sharing criteria adopted at WRC–95 for sharing between GSO FSS and NGSO MSS feeder link networks. The Commission expects satellite DARS feeder link networks, and NGSO MSS feeder link networks, to operate according to WRC–95 decisions. The Commission believes that, based on WRC–95 decisions, geostationary satellite DARS feeder links and NGSO MSS feeder links can co-exist in the 7 GHz band. There will be relatively few feeder link earth stations for both services and sufficient distance can be maintained between the transmitting feeder link earth stations for satellite DARS and the receiving earth stations of NGSO MSS feeder links networks. Additionally, according to WRC–95 decisions, transmitting NGSO MSS feeder link space stations must meet power flux density limits at the

geostationary orbit to protect receiving space stations in the 7 GHz band. The domestic coordination process, in accordance with Section 25.130 of the Rules, will facilitate feeder link Earth station licensing of both satellite DARS and NGSO MSS systems.

134. Two 12.5 MHz DARS licenses will be granted for use of the spectrum at 2320–2332.5 MHz, and 2332.5–2345 MHz, respectively. As discussed above, since the Commission is not opening the filing cut-off, the four applicants are the only eligible parties for these licenses. Accordingly, as all four applicants' proposals cannot be accommodated, it adopts rules to assign the licenses to two of these applicants through use of competitive bidding.

135. The Commission has authority under Section 309(j) of the Communications Act of 1934, as amended (''Communications Act''), to employ auctions to choose among mutually exclusive applications for initial licenses where the principal use of the spectrum is likely to involve the licensee receiving compensation from subscribers. Specifically, the Communications Act permits auctions where: (1) mutually exclusive applications for initial license or construction permits are accepted for filing by the Commission; (2) the principal use of the spectrum will involve, or is reasonably likely to involve, the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communication signals utilizing the licensed frequencies; and (3) the public interest objectives of Section 309(j) would be served by subjecting mutually exclusive applications in the service to competitive bidding.

136. In the *NPRM*, the Commission recognized that mutual exclusivity could arise if it decided not to make the entire 50 MHz of allocated spectrum available for satellite DARS licensing. The Commission also tentatively concluded that the principal use of the spectrum will be to provide subscription-based services. The Commission further concluded that using competitive bidding to assign DARS licenses would fulfill the public interest obligations mandated by statute.

137. Some commenters contend that the Commission is not authorized to auction DARS licenses because they believe the applications on file are not mutually exclusive. The pending applicants argue that the Commission has a statutory obligation to avoid mutual exclusivity, citing Section 309(j)(6)(E) of the Communications Act. CD Radio and American Mobile Radio Corporation (AMRC) also allege that the use of auctions to resolve applications filed before the Commission was granted competitive bidding authority is not warranted.

138. Based upon a review of the record in this proceeding, the Commission disagree with these commenters. As the Commission stated in the *NPRM*, with respect to the ''principal use'' requirement of Section 309(j), auctions are authorized if at least a majority of the use of the spectrum is likely to be for subscription-based services. In making this determination, the Commission looks to classes of licenses and permits rather than individual licenses. Given that three of the four current applicants propose to provide subscription-based service, the Commission concludes that the principal use of the satellite DARS spectrum is likely to involve the licensee receiving compensation from subscribers. The Commission notes, however, that its ''principal use'' determination does not in any way preclude satellite DARS licensees from providing any amount of non-subscription service, and they are not precluded from recovering auction costs, as well as the costs of construction, launch, and operation from sources other than subscribers, such as advertising.

139. The Commission also expects that the amended applications to be filed for the satellite DARS licenses will raise mutual exclusivity. While eligibility for this license is limited to the four existing applicants, the Commission expects that each of these applicants will file amended applications to participate in the auction for the two licenses in view of their continued interest, as expressed in this proceeding, in providing satellite DARS. In the event the Commission receives only one acceptable amended application for each of the licenses, the Wireless Telecommunications Bureau will issue a public notice cancelling the auction and establishing a date for the filing of an amended long-form application that complies with the service and technical rules adopted herein.

140. The Commission turns now to the issue of whether using competitive bidding to assign the satellite DARS licenses will promote the public interest objectives set forth in Section 309(j)(3) of the Communications Act. These objectives are:

(A) The development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) Promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) Recovery for the public of a portion of the value of the public spectrum made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

(D) Efficient and intensive use of the electromagnetic spectrum.

The Commission concludes that using competitive bidding procedures to award the DARS licenses will further these objectives. Using competitive bidding for satellite DARS, a new national satellite service, does not present the same complexities and difficulties inherent in any consideration of using auctions for transnational systems. The complex and difficult issues involved in using competitive bidding to award licenses for global systems are described in the Commission's recent *Little LEO* NPRM 61 FR 69062 (December 31,1996). Satellite DARS is a domestic service. In fact, other countries will use different frequency bands for satellite DARS service. This unique situation offers the Commission the opportunity to provide the public with the advantages of competitive bidding without the significant disadvantages involved in using auctions to license transnational services.

141. In general, paying for spectrum provides incentives for the licensee to construct quickly in order to obtain a return on its investment. The Commission therefore concludes that, in this particular set of circumstances, an auction for the satellite DARS licenses is likely to promote the rapid deployment of service because the party that is in the best position to deploy satellite DARS technologies and services is also likely to be the highest bidder. The Commission further believes that adopting competitive bidding procedures to award satellite DARS licenses is the most efficient mechanism for ensuring that satellite DARS is offered to the public in the most expeditious manner possible. Use of competitive bidding, as compared to other licensing methods, will speed the development and deployment of satellite DARS service to the public with

minimal administrative or judicial delays, and encourage efficient use of the spectrum as required by Section 309(j)(3)(A) and (D) of the Communications Act. Based on its experience with DBS, for example, the Commission believes that the satellite DARS auction could be concluded in a matter of days and it could move forward expeditiously with licensing. Additionally, competitive bidding will recover a portion of the value of the spectrum, as envisioned in Section 309(j)(3)(C).

142. As discussed *infra,* the Commission has not adopted special provisions for small businesses and other designated entities because of the extremely high implementation costs associated with satellite-based services and the lack of sufficient evidence in the current record to support the adoption of designated entity provisions. However, this does not mean either that the Commission has ignored Congress' mandate to offer designated entities the opportunity to participate in competitive bidding, that designated entities will be unable to participate in the DARS industry or that auctions of DARS spectrum will not promote many of the objectives of Section 309(j). Based upon prior experience with respect to other satellite-based services, it is likely that a wide variety of businesses, including designated entities, will be involved in various sectors of this industry as non-licensed operators, programmers, and equipment suppliers.

143. Moreover, the Commission disagrees with commenters' arguments that it is inappropriate to use competitive bidding procedures to select from mutually exclusive applications that were filed before the Commission was granted competitive bidding authority. The Commission observes that Section 6002 of the Omnibus Budget Reconciliation Act of 1993 (''1993 Budget Act'') specifically grants the Commission the discretion to decide whether to employ either lotteries or auctions to choose between mutually exclusive applications filed before July 26, 1993. In this regard, the Commission believes that, in balancing the advantages and disadvantages of using a lottery or an auction to award the DARS licenses, the public interest is best served by its use of competitive bidding. As discussed *supra,* the Commission believes that an auction will ensure that the licenses are awarded to the party that values it most highly, thereby maximizing efficient use of the spectrum and facilitating the expeditious delivery of service to the public. This is especially true with regard to nationwide licenses because the winning bidders at the auction will likely be the parties that have made the greatest commitment to satellite DARS and are best prepared to begin construction of a nationwide system. Finally, use of auctions to assign the DARS licenses will advance the goals of Section 309(j)(3)(C) of the Communications Act by enabling the Commission to recover for the public a portion of the value of the spectrum and avoid unjust enrichment to license winners.

144. In sum, the Commission concludes that it has the authority to award DARS licenses by means of competitive bidding. The Commission further concludes that the use of competitive bidding to assign DARS spectrum will promote the rapid deployment of DARS and the efficient use of DARS spectrum most effectively. The Commission will therefore award two 12.5 MHz DARS licenses by means of competitive bidding.

145. In the *NPRM,* the Commission proposed that a simultaneous multiple round auction be used to award DARS licenses if the Commission determined that competitive bidding procedures should be implemented. In a simultaneous multiple round auction, in every round, a bidder may bid on any of the licenses for which it is eligible. The auction does not close until bidding has ceased on all licenses. In the *Competitive Bidding Second Report and Order,* 59 FR 24947 (May 13, 1994), the Commission concluded that this method ensures that interdependent licenses will be awarded to the bidders who value them most highly by generating the most information about license values and providing bidders with the greatest degree of flexibility to pursue back-up strategies. In the *NPRM,* the Commission said that if it employs competitive bidding for DARS licensing, it would conduct it ''pursuant to the general framework adopted in the *Second Report and Order,* the Commission's rules, and consistent with other Commission proceedings where auctions have been employed.'' There were no comments on the Commission's proposed auction design or bidding procedures for DARS.

146. In view of the fact that the two DARS licenses are substitutable and these licenses will be significantly interdependent, the Commission concludes that a simultaneous multiple round auction design is the appropriate auction methodology. This auction methodology will generate valuable information about the licenses during the course of the auction. In addition, as noted below, consistent with the rules for other auctionable services, the Commission adopts bidding procedures to ensure that the auction proceeds at a rapid pace.

147. The Commission observes that a multiple round electronic auction generally will provide bidders useful information about other bidders' valuations. Bidders will be able to observe who is willing to bid on a license at each announced price. Providing this information may enable bidders to refine their estimates of the license value, thereby reducing the tendency of bidders for licenses with uncertain value to shade down their bids to avoid the ''winner's curse.'' Because of the Commission's discretion to adjust the length of bidding rounds in an electronic auction and the other auction design features described below, the Commission expects the auction to proceed rapidly. The Commission will provide for on-site electronic bidding because of the limited number of eligible participants and the anticipated rapid auction pace. The Commission reserves the option, however, to offer remote bidding where bidders can place their bids by computer from any location.

148. Consistent with the rules adopted in other services, the Commission concludes that the Wireless Telecommunications Bureau should have discretion to establish, raise and lower minimum bid increments during the course of the DARS auction. The Commission believes that this discretion over minimum bid increments is necessary to ensure that it can efficiently control the pace of the auction. The Commission anticipates using larger percentage minimum bid increments early in the auction and reducing the minimum increment percentage as bidding activity falls. The Commission also believes that the efficiency of the auction may be enhanced by limiting jump bidding, *i.e.*, bidding above the minimum accepted bids. Therefore, the Wireless Telecommunications Bureau will announce by Public Notice prior to auction the specific bid increment that generally will be used, and will also retain the discretion to establish and change maximum bid increments during the course of the auction. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

149. To maximize the amount of information generated during the course of an auction and to ensure that the auction closes in a reasonable amount of time, the Commission will require a bidder to be active on one license in each round of the auction or use an

activity rule waiver, as defined below. To be active in the current round, a bidder must submit an acceptable bid in the current round or have the high bid from the previous round. A bidder who is not active in a round and has no remaining activity rule waivers will no longer be eligible to bid on the license being auctioned. Bidders will not be permitted to be active on more than one license in a single round. The Commission sees no efficiency-enhancing reason to permit such bidding because the service rules allow only one license to be acquired per bidder. Moreover, experience in previous auctions has raised concerns that such bidding could be used to signal or engage in other forms of anticompetitive strategic bidding. The Commission delegates to the Wireless Telecommunications Bureau the authority to determine and announce by Public Notice bid withdrawal procedures for the DARS auction.

150. The Commission concludes that a minimum opening bid would help ensure that the auction proceeds quickly and would increase the likelihood that the public receives fair market value for the spectrum. The Commission will therefore establish a minimum opening bid for this spectrum, the amount of which will be announced by the Wireless Telecommunications Bureau by Public Notice. The Commission observes that this approach is consistent with its approach in the DBS context. The Wireless Telecommunications Bureau will determine the amount of the minimum opening bid using all available information and taking into consideration the uncertainty as to the value of the spectrum.

151. To make allowance for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, the Commission will provide bidders with a limited number of waivers of the above-described activity rule. The Commission believes that some waiver procedure is needed because the Commission does not wish to end a bidder's participation due to an accidental act or circumstances not under the bidder's control. The Commission will provide bidders with three activity rule waivers that may be used in any round during the course of the auction. A waiver will preserve eligibility in the next round. Waivers may be applied automatically by the Commission or invoked proactively by bidders. If a bidder is not active in a round, a waiver will be applied automatically. An automatic waiver applied in a round in which there are no new valid bids will not keep the auction open. A proactive activity rule waiver is a waiver invoked by a bidder during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

152. The Commission will retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control or in the event of a bid withdrawal, as discussed below. The Commission will also retain the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted.

153. A stopping rule specifies when an auction is over. The auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. The Commission retains the discretion, however, to keep the auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver. This will help ensure that the auction is completed within a reasonable period of time, because it will enable the Commission to utilize larger bid increments, which speed the pace of the auction, without risking premature closing of the auction.

154. In the *NPRM*, the Commission proposed to adopt the short-form application procedures, upfront payment requirements, public notice procedures, and default and disqualification provisions set forth in Subpart Q of Part 1 of the Commission's rules.

155. The Commission received no comments addressing these proposals. Because there only are four applicants eligible in this auction, all of whom previously filed applications for DARS licenses, the Commission will not use its short-form application requirement (FCC Form 175) and adopts a new rule for the DARS auction. Specifically, it will require these applicants to supplement their previously-filed applications within five days of the publication of this *Report & Order* in the Federal Register. The supplemental information must be certified and include the following: 1. Applicant's name; 2. Mailing Address (no Post Office boxes); 3. City; 4. State; 5. ZIP Code; 6. Auction Number 15; 7. FCC Account Number; 8. Person(s) authorized to make or withdraw a bid (list up to three individuals); 9. Certifications and name and title of person certifying the information provided; 10. Applicant's contact person and such person's telephone number, E-mail address and FAX number; 11. Signature and date. In keeping with previous practice, the Commission also retains discretion to implement or modify certain other procedures prior to the DARS auction, including rules governing the payment requirements.

156. As discussed below, the Commission will require applicants to submit to the Commission an upfront payment prior to commencement of the DARS auction. In addition, each auction winner will be required to submit an amount sufficient to bring its total deposit up to 20 percent of its winning bid within ten (10) business days of the announcement of the winning bidder. The winning bidder also will be required to supplement its application in accordance with Part 25 of the Commission's Rules. This procedure will constitute the ''long-form application'' process referred to in the general auction rules. The winning bidder will be required to file such information by a date specified by Public Notice, generally within 30 business days after the close of bidding. After receiving the winning bidder's long-form application and verifying receipt of the bidder's 20 percent down payment, the Commission will announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. If, pursuant to Section 309(d) of the Communications Act, the Commission dismisses or denies any and all petitions to deny, the Commission will issue an announcement to this effect, and the winning bidder will then have ten (10) business days to submit the balance of its winning bid. If the bidder fails to submit the balance of the winning bid or the license is otherwise denied, the Commission will assess a default payment as set forth below and re-auction the license among the other existing applicants. If no petitions to deny are filed, the Commission will issue a public notice conditionally granting the licenses pending final payment.

157. In the *NPRM* the Commission proposed an upfront payment requirement of $0.02 per MHz-pop to ensure that only serious, qualified bidders participate at auction. Initially, the commenters did not address the proposed upfront payment provisions. In various recent ex parte filings, however, the eligible applicants claim that an upfront payment based on $0.02 per MHz-pop is too high and is not needed to ensure that only serious, qualified bidders participate at auction. The Commission concludes that its proposed up-front payment of $0.02 per MHz-pop may be too high here. The

Commission observes that the eligible applicants in this auction have demonstrated a continued interest in providing DARS and have already expended significant resources towards this end. Accordingly, the Commission believes a more modest upfront payment for the auction of the DARS licenses is appropriate. The Commission believes that a payment that takes into consideration the valuation of similarly auctioned satellite spectrum (such as DBS) would be appropriate. The Commission therefore delegates authority to the Wireless Telecommunications Bureau and the International Bureau to determine an appropriate calculation for the upfront payment and announce it by Public Notice.

158. In the *Competitive Bidding Second Report and Order,* the Commission determined that bid withdrawal, default and disqualification provisions were needed to discourage insincere bidding. The Commission observed that insincere bidding, whether frivolous or strategic, distorts the price information generated by the auction process and reduces its efficiency. Accordingly, the Commission adopts the bid withdrawal, default and disqualification provisions as set forth in Sections 1.2104(g) and 1.2109 of the Commission's rules. Pursuant to these rules, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. If a license is reoffered by auction, the ''winning bid'' refers to the high bid in the auction in which the license is reoffered. If a license is reoffered in the same auction, the winning bid refers to the high bid amount in that auction, made subsequent to the withdrawal. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an amount equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, *i.e.,* they may decline without additional payment. The Commission wishes to encourage losing bidders in simultaneous multiple round auctions to bid on other licenses, and therefore the Commission will not hold them to their losing bids on license for which another bidder has withdrawn a bid or on which another bidder has defaulted.

159. After bidding closes, a defaulting auction winner (*i.e.,* a winner who fails to remit the required down payment within the prescribed time, fails to pay for a license, or is otherwise disqualified) will be assessed the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the high bid, plus an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, if the defaulting bid was less. The additional three percent payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. The Commission believes that these additional payments will adequately discourage default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements.

160. In addition, if withdrawal, default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission retains the option to declare the applicant and its principals ineligible to bid in future auctions, or to take any other action it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

161. The Commission notes that DARS licensees, like other satellite licensees, will be subject to rule 25.118, which prohibits transfers or assignments of licenses except upon application to the Commission and upon a finding by the Commission that the public interest would be served thereby. Even after DARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license. This prohibition on transfer of control will help assure sufficient continuing competition in the provision of satellite DARS service.

162. As it stated in the *NPRM,* the Commission believes that it is necessary to adopt a rule prohibiting collusive conduct in connection with the satellite DARS auction. However, the Commission believes that a modified rule is warranted because there are a limited number of identified eligible participants for the satellite DARS action and thus the additional safeguards associated with an auction with many more bidders are absent here. Specifically, the Commission will not adopt any exceptions to the general anti-collusion rule. As noted above, in lieu of short-form applications, the eligible DARS applicants will be required to supplement their pending applications with certain information within five days of the publication date of this *Order.* At that time, all applicants will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements with other bidders.

163. Due to the fact that this is a closed auction with a fixed number of eligible applicants, the Commission has determined that none of the three exceptions to its general collusion rules prohibiting discussions with other applicants will apply. Therefore, the applicants will not be permitted to enter into consortia or any type of joint bidding arrangement at any time since cooperation and collaboration are prohibited under the anti-collusion rule. Nor will they be able to enter into settlement arrangements following the filing of their supplemental information. Given the limited number of applicants (four) and available licenses (two), this is not the type of situation the Commission contemplated when it expressed its desire to preserve ''efficiency enhancing bidding consortia'' so as to possibly reduce entry barriers for smaller firms. The universe of bidders here is already established and very small. In this situation, the Commission believes that allowing any joint bidding arrangements among this limited group will merely serve to undercut the competitiveness of the auction process and limit the number of bidders for each license. In this vein, the Commission also concludes that the other exceptions to the collusion rule designed to allow bidders to combine or obtain additional capital from one another during an auction are inapplicable or unnecessary here. These applicants have been preparing and developing this service for years, and this will be a very short auction. Thus, any additional capitalization requirements are likely to already have been met or should be after the auction. The Commission believes that the five-day window is sufficient to enable the applicants to conclude any settlement discussions, given the fact that the parties have had significant time prior to the adoption of this Order to reach a settlement. After this five-day period, all negotiations (if any) must cease. This

rule is both fair to the four applicants, who had time to negotiate settlements and raise capital, while helping to ensure the competitiveness of the auction and the post-auction market. All applicants will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders five days after publication of this report and order in the Federal Register.

164. Finally, in adopting these rules for the DARS auction, the Commission also reminds the eligible bidders that allegations of collusion may be investigated by the Commission or referred to the U.S. Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's Rules while participating in an auction may be subject to forfeiture of their down payment or their full bid amount, as well as revocation of their license, and may be prohibited from participating in future auctions.

165. In the *NPRM*, the Commission asked commenters to discuss whether special provisions should be adopted to enable small businesses, businesses owned by minorities and women, and rural telephone companies (rural telcos) (collectively referred to as ''designated entities'') to participate at auction and in the provision of DARS.

166. The Commission received no comments addressing this issue. In an *ex parte* filing, CD Radio proposes that entrepreneurs and small businesses (as defined in the rules for broadband PCS C and F blocks) be afforded an installment payment plan. CD Radio claims, among other things, that failure to adopt such financing incentives would put pressure on the small business applicants to sell their ''place in line'' to large companies and encourage transfers and possible unjust enrichment of speculative applicants. The Commission first notes that the legislative history of the designated entity provisions shows that Congress did not necessarily intend for special measures in services such as DARS, as demonstrated by the following reference: ''[t]he characteristics of some services are inherently national in scope, and are therefore ill-suited for small businesses.'' Moreover, the Commission previously concluded that, because of the extremely high implementation costs associated with satellite-based services, no special provisions for designated entities would be made. In part, this conclusion was reached because it was unclear whether small businesses could attract the capital necessary to implement and provide satellite-based services. Second, pursuant to Section 309(j), the purpose of such provisions is to attract the participation of a wide variety of small business applicants. In view of the fact that this is a closed auction with a fixed number of eligible applicants, this purpose of attracting a wide-array of applicants will not be served here. Third, the record is lacking in support for what the appropriate small business threshold is in the DARS context and whether any of the four applicants, including CD Radio, would qualify as a small business. In the DBS context, the Commission did not provide for designated entity provisions, primarily due to the high implementation costs and the lack of interest expressed by the potential beneficiaries, *i.e.*, small businesses, businesses owned by minorities and women, and rural telecos. In this connection, the Commission notes that CD Radio's proposal is not supported by the *ex parte* filings of other potential applicants who arguably would fall within the definitions of entrepreneur and small business proposed by CD Radio. In contrast to CD Radio's proposal, in its *ex parte* filing, DSBC states that, ''[s]o long as the auction is limited to the four pending applicants, the Commission need not employ bidding credits or installment payments, or identify designated entities, to level the playing field among this group of potential licensees.'' Likewise, in its *ex parte* filing, Primosphere similarly states that ''[t]here should be no bidding preferences'' and ''[a]ll four applicants should be treated equally.''

167. The Commission is, therefore, not convinced that in order to promote the objectives of Section 309(j)(3)(B) ensuring that new and innovative technologies are readily accessible to the American people and the dissemination of licenses among a wide variety of applicants, including small businesses, it needs to provide designated entity provisions, such as the financial incentives requested by CD Radio. Moreover, it concludes that the present record is insufficient to support either race-based rules under the strict scrutiny standard, or to support gender-based rules under the intermediate scrutiny standard that currently applies to those rules. Accordingly, the Commission is not adopting designated entity provisions for DARS.

168. The Commission believes that the foregoing decision and licensing plan best serves the public interest in assuring that the spectrum in question is most efficiently utilized while allowing the implementation of new, innovative services.

169. Accordingly, *it is ordered* that Part 25 of the Commissions rules are hereby amended as set forth below.

170. Accordingly, *it is ordered* that Parts 25 and 87 of the Commissions rules are hereby *amended* as set forth below, and the new and amended rules in Sections 25.144, 25.201, 25.202, 25.214 and 87.303 *shall become effective* April 10, 1997, except that the new rules in Sections 25.401, 25.402, 25.403, 25.404, 25.405, and 25.406 *shall become effective* March 11, 1997. The Commission finds good cause to make the auction rules for satellite DARS (Subpart F of Part 25) effective immediately upon publication in the Federal Register. These rules will allow the four pending applicants to amend their applications, which have been pending for more than four years, and to participate in the auction for this new service, for which spectrum was allocated two years ago. Immediate application of the rules governing the auction procedures will therefore expedite the DARS auction and the introduction of service to the public, including those residing in rural areas, in accordance with Section 309(j)(3)(A) of the Communications Act. In addition, the Commission notes that the pending applicants have made substantial financial investment in anticipation of the licensing of DARS. Finally, it is important that the DARS auction take place prior to the Wireless Communications Service (''WCS'') auction, which Congress had mandated begin no later than April 15, 1997. According to the applicants, their several years of planning and financial investment would be undermined if a WCS auction winner were to enter the DARS market first. The DARS applicants also contend that they may need WCS spectrum for auxiliary support of DARS operations, that they need time to assess these auxiliary needs, but that their efforts will be frustrated if WCS is auctioned first. Accordingly, the Commission finds that further deferral of the DARS auction and licensing procedures by a delay in the effective date, for purposes of providing adequate notice to the affected parties, would be impracticable, unnecessary and contrary to the public interest.

171. The Final Regulatory Flexibility analysis is included as follows:

Final Regulatory Flexibility Analysis of Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking

As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission incorporated and sought comment on an

Initial Regulatory Flexibility Analysis (IRFA) in Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band, 11 FCC Rcd 1 (1995) (NPRM). The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (Order) conforms to the RFA, as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA).

A. Need for and Purpose of This Action

In this Order, the Commission promulgates rules and assigns licenses for satellite Digital Audio Radio Service (DARS). The objective in this proceeding is to help establish a new service to provide continuous nationwide radio programming with compact disc quality sound. This new service has the potential to increase the variety of programming available to the listening public by offering new niche channels. Satellite DARS also promises to serve listeners in areas of the country that have been underserved by terrestrial radio.

B. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the IRFA. The Commission received numerous comments on the wide variety of licensing and other issues raised by the NPRM, none of which were directly related to the treatment of small entities. Although not directed to the IRFA, three entities proposing to provide satellite DARS have filed *ex parte* comments concerning the issue of whether the Commission should employ special auction provisions to aid small businesses. These comments are addressed in Section V of this analysis.

C. Description and Estimate of the Small Entities Subject to the Rules

The Commission has not developed its own definition of ''small entity'' for purposes of licensing satellite delivered services. Accordingly, the Commission relies on the definition of ''small entity'' provided under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. A ''small entity'' under these SBA rules is defined as an entity with $11.0 million or less in annual receipts. Based on the record in this proceeding, the Commission finds that the four current satellite DARS applicants are all ''small entities'' under the SBA definition. Because of spectrum limitations, the Commission does not foresee that there will be capacity for additional systems in the frequency band exclusively allocated for satellite DARS.

D. Summary of Projected Reporting, Record Keeping and Other Compliance Requirements

Satellite DARS licensees will be required to begin construction of their space stations within one year of license grant, launch and begin operating their first satellite within four years, and begin operating their entire system within six years. They will be required to file annual reports on the status of their progress. Entities will require knowledge of satellite operations in order to prepare these reports.

E. Significant Alternatives and Steps Taken By Agency To Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

The NPRM proposed three possible licensing options for satellite DARS: (1) to license the available spectrum to the current four applicants; (2) to license less that the total available spectrum to the four applicants and auction the remainder; or, (3) to accept new applications and auction all licenses.

After the NPRM was released, the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208, 110 Stat. 3009 (1996) (Appropriations Act) directed the Commission to reallocate spectrum at 2305–2320 MHz and 2345–2360 MHz for all services consistent with international allocations and to award licenses in that portion of the band using competitive bidding. As a consequence, the licenses designated pursuant to this Order will authorize satellite DARS operation in the spectrum between 2320 and 2345 MHz. Because the record indicates that 12.5 MHz is necessary for a licensee to provide a viable satellite DARS service and because only 25 MHz remains as an exclusive DARS allocation, the Commission will award two licenses and use competitive bidding to resolve mutual exclusivity among the four current applicants. These applicants are CD Radio, Inc., Digital Satellite Broadcasting Corp., Primosphere Limited Partnership, and American Mobile Radio Corp.

In deciding how to proceed, the Commission had two alternatives—either to reopen the filing window and accept additional applications or to limit eligibility to the four applicants that filed before the 1993 cut-off date. Because the Commission is not permitting additional applications, the four applicants who filed applications in 1990 and 1993, all of which are small entities, are the only parties eligible to participate in the satellite DARS auction, and only two of these applicants will receive operating licenses. No other entities, including any small entities, will be able to participate in the subsequent auctions, or ultimately receive operating licenses. The decision to not reopen the filing cut-off is based on sound satellite licensing policy and precedent and the equities of this particular proceeding. In this satellite proceeding, as in others, applicants require some measure of certainty to justify the inherently long-term investment of resources required by complex and lengthy international allocation and coordination procedures that must be completed prior to inauguration of service. This unique feature of satellite services, combined with the need to most expeditiously provide new services to the public, outweighs any benefits that would accrue from accepting additional applications.

Although one current applicant argues that special auction provisions are necessary, two others state that as long as the auction is limited to the four applicants, the Commission should not employ bidding credits or installment payments. As it has explained, the Commission has not adopted special auction provisions for small businesses. The Commission notes, however, that the proposal adopted herein will promote the principal objectives of Section 309(j) because all those participating in the bidding for these licenses are small businesses under the SBA definition.

172. The Paperwork Reduction Act does not apply to the rules adopted herein as such rules apply to less than ten persons.

173. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR Sections 1.202, 1.203, and 1.1206(a).

174. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before May 2, 1997 and reply comments on or before May 23, 1997. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file

an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239,1919 M Street, N.W., Washington, D.C. 20554.

175. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chiefs, Wireless Telecommunications Bureau and International Bureau, *are delegated authority* to implement and modify auction procedures in the DARS service, including the general design and timing of an auction, the manner of submitting bids, minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements.

176. *It is further ordered* that the requests for pioneer's preference filed by Satellite CD Radio, Inc., Digital Satellite Broadcasting Corporation, and Primosphere Limited Partnership—PP–24, PP–86 and PP–87, respectively, in GEN Docket No. 90–357—*are dismissed*.

177. *It is further ordered* that the petition for reconsideration filed on February 17, 1995 by Underripe National Radio Sales, Inc. *is denied*.

178. This action is taken pursuant to Sections 1, 4(i), 4(j), 7, 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 303(r) and 309(j).

List of Subjects

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 87

Air Transportation, Communications equipment, Defense communications, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Parts 25 and 87 of Title 47 of this chapter are amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 is revised to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. A new Section 25.144 is added under the heading ''Space Stations'' to read as follows:

§ 25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.

(a) Qualification Requirements:

(1) Satellite CD Radio, Primosphere Limited Partnership, Digital Satellite Broadcasting Corporation, and American Mobile Radio Corporation are the applicants eligible for licensing in the satellite digital audio radio service.

(2) General Requirements: Each application for a system authorization in the satellite digital audio radio service in the 2310–2360 MHz band shall describe in detail the proposed satellite digital audio radio system, setting forth all pertinent technical and operational aspects of the system, and the technical, legal, and financial qualifications of the applicant. In particular, applicants must file information demonstrating compliance with § 25.114 and all of the requirements of this section.

(3) Technical Qualifications: In addition to the information specified in paragraph (a)(1) of this section, each applicant shall:

(i) Demonstrate that its system will, at a minimum, service the 48 contiguous states of the United States (full CONUS);

(ii) Certify that its satellite DARS system includes a receiver that will permit end users to access all licensed satellite DARS systems that are operational or under construction; and

(iii) Identify the compression rate it will use to transmit audio programming. If applicable, the applicant shall identify the compression rate it will use to transmit services that are ancillary to satellite DARS.

(b) Milestone Requirements. Each applicant for system authorization in the satellite digital audio radio service must demonstrate within 10 days after a required implementation milestone as specified in the system authorization, and on the basis of the documentation contained in its application, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the milestone has been met. This showing shall include all information described in § 25.140 (c), (d) and (e). The satellite DARS milestones are as follows, based on the date of authorization:

(1) One year: Complete contracting for construction of first space station or begin space station construction;

(2) Two years: If applied for, complete contracting for construction of second space station or begin second space station construction;

(3) Four years: In orbit operation of at least one space station; and

(4) Six years: Full operation of the satellite system.

(c) Reporting requirements. All licensees of satellite digital audio radio service systems shall, on June 30 of each year, file a report with the International Bureau and the Commission's Laurel, Maryland field office containing the following information:

(1) Status of space station construction and anticipated launch date, including any major problems or delay encountered;

(2) A listing of any non-scheduled space station outages for more than thirty minutes and the cause(s) of such outages; and

(3) Identification of any space station(s) not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

(d) The license term for each digital audio radio service satellite shall commence when the satellite is launched and put into operation and the term will run for eight years.

3. Section 25.201 is amended by adding the definition of ''Satellite Digital Audio Radio Service'' in alphabetical order to read as follows:

§ 25.201 Definitions

* * * * *

Satellite Digital Audio Radio Service (''DARS''). A radiocommunication service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters, telemetry, tracking and control facilities.

* * * * *

4. Section 25.202 is amended by adding a new paragraph (a)(6) to read as follows:

§ 25.202. Frequencies, frequency tolerance and emission limitations.

(a) * * *

(6) The following spectrum is available for exclusive use by the satellite digital audio radio service:

2320–2345 MHz: space-to-Earth (primary).

* * * * *

5. A new § 25.214 is added to read as follows:

§ 25.214 Technical requirements for space stations in the satellite digital audio radio service.

(a) Definitions.

(1) *Allocated bandwidth.* The term ''allocated bandwidth'' refers to the entry in the Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more terrestrial or space radiocommunication services under specified conditions. This term shall be applied to the 2310–2360 MHz band for satellite DARS.

(2) *Frequency Assignment.* The term ''frequency assignment'' refers to the authorization given by the Commission for a radio station to use a radio frequency or radio frequency channel under specified conditions. This term shall be applied to the two frequency bands (A) 2320.0–2332.5 MHz and (B) 2332.5–2340.0 MHz for satellite DARS.

(b) Each system authorized under this section will be conditioned upon construction, launch and operation milestones as outlined in § 25.144(b). The failure to meet any of the milestones contained in an authorization will result in its cancellation, unless such failure is due to circumstances beyond the licensee's control or unless otherwise determined by the Commission upon proper showing by the licensee in any particular case.

(c) Frequency assignments will be made for each satellite DARS system as follows:

(1) Exclusive satellite DARS licenses are limited to the 2320–2345 MHz band segment of the allocated bandwidth for satellite DARS;

(2) Two, 12.5 MHz frequency assignments are available for satellite DARS: 2320.0–2332.5 MHz and 2332.5–2345.0 MHz;

(3) Satellite DARS licensees may reduce their assigned bandwidth occupancy to provide telemetry beacons in their exclusive frequency assignments;

(4) Each licensee may employ cross polarization within its exclusive frequency assignment and/or may employ cross polarized transmissions in frequency assignments of other satellite DARS licensees under mutual agreement with those licensees. Licensees who come to mutual agreement to use cross-polarized transmissions shall apply to the Commission for approval of the agreement before coordination is initiated with other administrations by the licensee of the exclusive frequency assignment; and

(5) Feeder uplink networks are permitted in the following Fixed-Satellite Service frequency bands: 7025–7075 MHz and 6725–7025 MHz (101° W.L. orbital location only).

6. A new subpart F consisting of sections 25.401 through 25.406 is added to Part 25 to read as follows:

Subpart F—Competitive Bidding Procedures for DARS

Sec.
25.401 Satellite DARS applications subject to competitive bidding.
25.402 Competitive bidding mechanisms.
25.403 Bidding application and certification procedures.
25.404 Submission of downpayment and filing of long-form applications.
25.405 Prohibition of collusion.
25.406 License grant, denial, default, and disqualification.

Subpart F—Competitive Bidding Procedures for DARS

§ 25.401 Satellite DARS applications subject to competitive bidding.

Mutually exclusive initial applications filed by Satellite CD Radio, Primosphere Limited Partnership, Digital Satellite Broadcasting Corporation, and American Mobile Radio Corporation, to provide DARS service are subject to competitive bidding procedures. The procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise specified in this subpart.

§ 25.402 Competitive bidding mechanisms.

(a) *Tie bids.* Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

(b) *Maximum bid increments.* The Commission may, by announcement before or during the auction, establish maximum bid increments in dollar or percentage terms.

(c) *Minimum opening bid.* The Commission will establish a minimum opening bid for the DARS spectrum, and the amount of which will be announced by Public Notice prior to the auction.

(d) *Activity rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. Bidders will be entitled to request and be granted waivers of such rule. The Commission will specify the number of waivers permitted in an auction, the frequency with which they may be exercised, and the method of operation of waivers by Public Notice prior to the auction.

§ 25.403 Bidding application and certification procedures.

Submission of Supplemental Application Information. In order to be eligible to bid, each pending applicant must timely submit certain supplemental information. All supplemental information shall be filed by the applicant five days after publication of these rules in the Federal Register. The supplemental information must be certified and include the following:

(a) Applicant's name;

(b) Mailing Address (no Post Office boxes);

(c) City;

(d) State;

(e) ZIP Code;

(f) Auction Number 15;

(g) FCC Account Number;

(h) Person(s) authorized to make or withdraw a bid (list up to three individuals);

(i) Certifications and name and title of person certifying the information provided;

(j) Applicant's contact person and such person's telephone number, E-mail address and FAX number; and

(k) Signature and date.

§ 25.404 Submission of down payment and filing of long-form applications.

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within ten (10) business days of a Public Notice announcing the high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the ''down payment'') as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest on any down payment will be paid to a bidder.

(c) A high bidder that meets its down payment obligations in a timely manner must, within thirty (30) business days after being notified that it is a high bidder, submit an amendment to its pending application to provide the information required by § 25.144.

§ 25.405 Prohibition of collusion.

Upon the deadline for filing the supplemental information required by § 25.403, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment.

§ 25.406 License Grant, Denial, Default, and Disqualification.

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following public notice by the Commission that it is prepared to award the licenses. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 25.404(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in § 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file an application for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture their up front payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

PART 87—AVIATION SERVICES

1. The authority citation in Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Paragraph (d)(1) of § 87.303 is revised to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2390 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. The band 1525–1535 MHz is also available for these purposes on a secondary basis. In the band 2320–2345 MHz, the mobile and radiolocation services are allocated on a primary basis until a Broadcast-Satellite (sound) service has been brought into use in such a manner as to affect or be affected by the mobile and radiolocation services in those service areas. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435–1530 MHz band, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2320–2345 MHz and 2360–2390 MHz bands, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2332.5, 2364.5, 2370.5 and 2382.5 MHz. In the 2360–2390 MHz band, all other telemetry and telecommand uses are secondary to the above stated launch vehicle uses.

* * * * *

[FR Doc. 97–6064 Filed 3–10–97; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833 and 1852

NASA FAR Supplement; Protests to the agency

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

ACTION: Interim rule; request for comments.

SUMMARY: The Federal Acquisition Regulation (FAR) was amended to revise procedures for submission of protests to Federal agencies. In order to implement the changes made to the FAR, this rule provides for a solicitation provision that informs offerors to whom protests may be submitted as an alternative to submission to the NASA contracting officer. The effect of the changes is to give prospective NASA contractors an additional means for submitting protests in order to resolve their concerns about a contract or solicitation.

DATES: This interim rule is effective March 11, 1997. NASA will accept written comments until May 12, 1997.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space Administration, Contract Management Division (Code HK/Beck), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dave Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION: .

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 512–1800. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Background

Section 33.103 of the Federal Acquisition Regulation (FAR), 48 CFR 33.103, was amended to revise procedures for submission of protests to Federal agencies (62 FR 270, January 2, 1997). In order to implement the changes made to the FAR, this rule provides for a solicitation provision that informs offerors to whom protests may be submitted as an alternative to submission to the contracting officer.

Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule implements previously adopted Federal-wide regulations by simply providing for a solicitation provision that informs offerors to whom protests may be submitted as an alternative to submission to the contracting officer. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small

entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement does not impose any new recordkeeping or information collection requirements, or new collections of information from offerors contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1833 and 1852

Government procurement.

Tom Luedtke

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1833 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1833 and 1852 continues to read as follows:

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

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

2. Section 1833.103 is revised to read as follows:

1833.103 Protests to the agency. (NASA supplements paragraph (b))

(b) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

3. Section 1833.106–70 is added to read as follows:

1833.106–70 Solicitation provision.

Contracting officers shall insert the provision at 1852.233–70 in all solicitations.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.233–70 is added to read as follows:

1852.233–70 Protests to NASA.

As prescribed in 1833.106–70, insert the following provision:

Protests to NASA (March 1997)

Potential bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Deputy Associate Administrator for Procurement, NASA Code H, Washington, DC 20546–0001.

[FR Doc. 97–5692 Filed 3–10–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 030497A]

Summer Flounder Fishery

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Maine has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine for the remainder of calendar year 1997, unless additional quota becomes available through a transfer. This announcement is in accordance with the regulations governing the summer flounder fishery.

EFFECTIVE DATE: March 5, 1997 through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Management Specialist, 508–281–9280.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state are described in § 648.100.

The total commercial quota for summer flounder for the 1997 calendar year is set equal to 11,111,298 lb (5,040,000 kg), effective March 5, 1997. The percentage allocated to vessels landing summer flounder in Maine is 0.04756 percent, or 5,284 lb (2,397 kg).

Section 648.100(d)(2) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In calendar year 1996, a total of 8,226 lb (3,731 kg) were landed in Maine. The amount allocated for Maine landings in 1996 was 5,284 lb (2,397 kg), creating a 2,942 lb (1,334 kg) overage that was deducted from the amount allocated for landings in that state during 1997, effective March 5, 1997. The resulting quota for Maine is 2,342 lb (1,062 kg).

Section 648.101(b) requires the Regional Administrator to monitor state commercial quotas and to determine when a state commercial quota is harvested. The Regional Administrator is further required to publish an announcement in the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the State of Maine has attained its quota for 1997, the Regional Administrator has determined based on dealer reports and other available information, that the State's commercial quota has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours March 5, 1997, further landings of summer flounder in Maine by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1997 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maine for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

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

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

Dated: March 5, 1997.

Gary C. Matlock,

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

[FR Doc. 97–5876 Filed 3–5–97; 4:30 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961220363–7038–02; I.D. 120296B]

RIN 0648–AI65

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

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

ACTION: Final rule.

SUMMARY: NMFS implements a regulatory amendment to reduce maximum retainable bycatch percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and to allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rate of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery. This action is intended to further the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

EFFECTIVE DATE: April 10, 1997.

ADDRESSES: Copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

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

Regulations at § 679.20(e) establish maximum retainable bycatch (MRB) percentages for groundfish species or species groups. These MRB percentages establish the amount of a species that is closed to directed fishing that may be retained on board a vessel, relative to amounts of other retained species open to directed fishing.

At the Council's September 1996 meeting, the Council requested that NMFS initiate rulemaking to change several MRB percentages. This request was in response to (1) concerns about the extent to which some existing MRB percentages allow vessel operators to top off their retained catch of bycatch species up to the MRB amount and (2) testimony that a limited fishery for GOA arrowtooth flounder exists and that this species should be allowed as a basis species for the retention of pollock and Pacific cod. A proposed rule to implement the Council's recommended changes was published in the Federal Register on January 6, 1997 (62 FR 724). No comments were received within the public comment period that ended February 5, 1997.

This final rule implements the following changes to the MRB percentages established for GOA groundfish:

1. The MRB percentage for sablefish relative to deep water species is reduced from 15 percent to 7 percent; and

2. The use of GOA arrowtooth flounder is allowed as a basis species for the retention of pollock and Pacific cod. An MRB of 5 percent of each these species relative to arrowtooth flounder is established.

Further justification of these changes is discussed in the preamble to the proposed rule.

Changes from the proposed rule

NMFS clarifies § 679.20(f)(2) so that regulatory constraints to using arrowtooth flounder as a basis to calculate retained amounts of other groundfish species are consistent with the allowances provided under the final rule for GOA pollock and Pacific cod.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the Federal Register with the proposed rule (62 FR 724, January 6, 1997). No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: March 3, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

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

2. In part 679, Table 10 is revised to read as follows:

TABLE 10 TO PART 679.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Pollock	Pacific cod	Deep flatfish	Rex sole	Bycatch species [1]				Aggregated rockfish [2]	DSR SEEO [4]	Atka mackerel	Other species
					Flathead sole	Shallow flatfish	Arrowtooth	Sablefish				
Basis Species:												
Pollock	[3] na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	[3] na	20	20	20	20	35	1	5	10	20	20
Deep flatfish	20	20	[3] na	20	20	20	35	7	15	1	20	20
Rex sole	20	20	20	[3] na	20	20	35	7	15	1	20	20
Flathead sole	20	20	20	20	[3] na	20	35	7	15	1	20	20
Shallow flatfish	20	20	20	20	20	[3] na	35	1	5	10	20	20
Arrowtooth	5	5	0	0	0	0	[3] na	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	[3] na	15	1	20	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	20

TABLE 10 TO PART 679.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES—Continued

	Pollock	Pacific cod	Deep flatfish	Rex sole	Bycatch species [1]				Aggregated rockfish [2]	DSR SEEO [4]	Atka mackerel	Other species
					Flathead sole	Shallow flatfish	Arrowtooth	Sablefish				
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	20
DSR–SEEO	20	20	20	20	20	20	35	7	15	[3] na	20	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3] na	20
Other species	20	20	20	20	20	20	35	1	5	10	20	[3] na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] na=not applicable.
[4] SEEO=Southeast Outside District.

3. In § 679.20, paragraph (f)(2) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed, may not be used to calculate retainable amounts of other groundfish species.

* * * * *

[FR Doc. 97–5977 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 47
Tuesday, March 11, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 96–070–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1994 and 1996 National Plan Conferences. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: Consideration will be given only to comments received on or before May 12, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–070–1, 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. 96–070–1. 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. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1500 Klondike Road, Suite A–102, Conyers, GA 30207; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as ''U.S. Pullorum-Typhoid Clean'' before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart B, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis*, require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified ''U.S. Sanitation Monitored'' under the Plan or they meet the requirements of a State classification plan that the Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined to be equivalent to the Plan, in accordance with 9 CFR 145.23(d).

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. APHIS amends these provisions from time to time to incorporate new scientific information and technologies within the Plan. In this document, we are proposing to amend the regulations to:

1. Standardize the time frame for the retesting of U.S. Pullorum-Typhoid Clean breeding flocks retained for more than 12 months by requiring that the retesting take place a minimum of 4 weeks after the induction of molt.

2. Establish a ''U.S. Salmonella Monitored'' program for primary meat-type chicken breeding flocks.

3. Establish a ''U.S. M. Gallisepticum Monitored'' classification for multiplier meat-type chicken breeding flocks that are not participating in the ''U.S. M. Gallisepticum Clean'' classification.

4. Establish a ''U.S. M. Synoviae Monitored'' classification for multiplier meat-type chicken breeding flocks that are not participating in the ''U.S. M. Synoviae Clean'' classification.

5. Amend the ''U.S. M. Gallisepticum Clean'' and ''U.S. M. Synoviae Clean'' classifications for meat-type chicken breeding flocks by augmenting testing when adding (spiking) males.

6. Add a procedure for swabbing or collecting chick papers for bacteriological examination for salmonella.

7. Add a 4 to 6 week surveillance test for M. gallisepticum to the ''U.S. M. Gallisepticum Clean'' classification for turkeys.

8. Make the qualification test sample size for ''U.S. M. Meleagridis Clean'' consistent with that for the ''U.S. M. Gallisepticum Clean'' and ''U.S. M. Synoviae Clean'' classifications for turkeys.

9. Simplify the description of the procedure for determining the status of flocks reacting to tests for *M. gallisepticum*, *M. synoviae*, and *M. meleagridis*.

10. Amend the ''U.S. Sanitation Monitored, Turkeys'' classification to remove the requirement for the environmental sampling of a laying house following the removal of a flock from the house.

11. Establish a ''U.S. M. Synoviae Clean'' classification for waterfowl, exhibition poultry and game birds.

12. Raise from 75 to 150 the number of birds to be tested to qualify flocks for ''U.S. M. Synoviae Clean'' status.

These proposed amendments, with the exception of number 12, are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from June 30 to July 2, 1996. Proposed amendment number 12 was approved by the voting delegates to the National Plan Conference that was held from June 26 to 28, 1994. Participants in the 1994 and 1996 National Plan Conferences represented flockowners, breeders, hatcherymen, and Official

State Agencies from all cooperating States. The proposed amendments are discussed in greater detail below.

Retesting of U.S. Pullorum-Typhoid Clean Breeding Flocks

We are proposing to amend §§ 145.23(b), 145.33(b), and 145.43(b) to provide a minimum time period before the retesting of a U.S. Pullorum-Typhoid Clean participating breeding flock that is retained for more than 12 months. The regulations in those sections currently set forth the criteria under which flocks may qualify for the U.S. Pullorum-Typhoid Clean classification and provide that flocks that are retained for more than 12 months shall be retested at the discretion of the Official State Agency with the concurrence of APHIS.

As breeding flocks, including those retained for more than 12 months, progress through a laying cycle, the shell quality of the eggs produced tends to deteriorate as calcium and other essential minerals are depleted from the laying birds. Flockowners may pause the laying cycle in these birds by inducing molt, which gives the birds the opportunity to replenish their levels of the depleted minerals. Thus, when the birds, which are referred to as recycled breeding birds, begin a new laying cycle, shell quality is back at the proper level.

Research has shown that the stress of molting causes birds that are affected with *salmonella* to shed the organism at a higher rate than during the laying cycle, which means that the best opportunity to isolate the *salmonella* organism through testing will come following the induction of molt. Therefore, we are proposing to amend the requirements for the retesting of such flocks by requiring that recycled breeding birds be retested a minimum of 4 weeks after the induction of molt, rather than at the discretion of the Official State Agency with the concurrence of APHIS. This proposed change would standardize the retesting requirements for U.S. Pullorum-Typhoid Clean flocks retained for more than 12 months and ensure that the recertification of those flocks is based on testing conducted at a time when the *salmonella* organism is most likely to be isolated.

U.S. Salmonella Monitored Classification

We are proposing to amend § 145.33 to establish a ''U.S. Salmonella Monitored'' classification for primary meat-type chicken breeding flocks. The proposed new classification, like the existing ''U.S. Sanitation Monitored'' classification available to primary meat-type chicken breeding flocks, is intended to serve as a means for the prevention and control of Salmonellosis in hatching eggs and chicks through an effective and practical sanitation program at the breeder farm and in the hatchery.

The proposed ''U.S. Salmonella Monitored'' classification differs from the existing ''U.S. Sanitation Monitored'' classification in two respects. First, the proposed new classification specifically calls for the collection of environmental samples at the hatchery from meconium and chick papers every 30 days; those samples would have to be examined bacteriologically at an authorized laboratory for *salmonella.* That proposed requirement, which is not required by the existing ''U.S. Sanitation Monitored'' classification, would provide for the continuous monitoring of the *salmonella* status of participating hatcheries.

The proposed new classification also differs from the existing ''U.S. Sanitation Monitored'' classification with regard to the use of vaccines. In the proposed ''U.S. Salmonella Monitored'' classification, owners of flocks would be allowed to vaccinate their flocks with a paratyphoid vaccine as a preventive measure, provided that a sample of 350 birds remains unvaccinated to serve as sentinel birds. The sample of 350 unvaccinated birds would have to be banded for identification and remain unvaccinated until the flock reaches at least 4 months of age. Under the existing ''U.S. Sanitation Monitored'' classification, a flockowner may not vaccinate a flock unless the flock has been found to be infected with paratyphoid *salmonella.* The proposed new ''U.S. Salmonella Monitored'' classification, therefore, would give participating flockowners the opportunity to take a more aggressive approach to the prevention of Salmonellosis by allowing them to use vaccines before there is an indication of the presence of *salmonella* in a flock.

New M. Gallisepticum Monitored and M. Synoviae Monitored Classifications

We are proposing to amend § 145.33 to establish a ''U.S. M. Gallisepticum Monitored'' classification for meat-type chicken multiplier breeding flocks that are not participating in the ''U.S. M. Gallisepticum Clean'' classification and to establish a ''U.S. M. Synoviae Monitored'' classification for meat-type chicken multiplier breeding flocks that are not participating in the ''U.S. M. Synoviae Clean'' classification. Adding these two new ''monitored'' classifications would give flockowners the ability to participate in disease-monitoring programs for *M. gallisepticum* and *M. synoviae* without incurring the higher testing costs associated with the ''clean'' classifications for those two diseases. The proposed new classifications would also allow official State agencies and the Plan to monitor the *M. gallisepticum* and *M. synoviae* status of flocks that would not otherwise be monitored for those diseases.

Under both the proposed ''U.S. M. Gallisepticum Monitored'' and the proposed ''U.S. M. Synoviae Monitored'' classifications, flocks would be qualified by testing a sample of at least 20 birds per house for the classification's disease of concern (*M. gallisepticum* or *M. synoviae,* as the case may be) once the flock reaches at least 4 months of age. Once qualified, the flock's classification would be retained by additional tests for the disease of concern conducted on additional 20-bird samples collected when the flock reaches 36 to 38 weeks and again at 48 to 50 weeks. Testing at this level would provide a basic level of monitoring for *M. gallisepticum* or *M. synoviae* within a flock but would not involve the higher expenses incurred by flockowners testing the larger samples required by the ''clean'' classifications for those two diseases. To help ensure that the samples of birds would be representative of all the birds in each house, half of the samples would have to be drawn from the front of the house and half of the samples would have to be drawn from the back. Additionally, the ratio of male to female birds in a sample would have to reflect the ratio of male to female birds in the house, and samples would have to be labeled accordingly. Requiring a representative number of male and female birds to be included in the sample would further ensure that the samples provide an accurate representation of the birds in the house.

To help prevent the possible exposure of flocks in these ''monitored'' classifications to disease from outside the flock, we would require participating flockowners handling U.S. M. Gallisepticum Monitored or U.S. M. Synoviae Monitored products (i.e., poultry breeding stock and hatching eggs, baby poultry, and started poultry) to keep those products separate from other products in a manner satisfactory to the Official State Agency. Because *M. gallisepticum* and *M. synoviae* are egg-transmitted diseases, we would further specify that chicks from the multiplier breeding flocks in these two ''monitored'' classifications would have

to be produced in incubators and hatchers in which only eggs from flocks with the same classification are set. This precaution would ensure that eggs from a monitored flock would not be set in the same incubator or hatcher as eggs from a flock that is not qualified under the ''U.S. M. Gallisepticum Monitored'' or ''U.S. M. Synoviae Monitored'' classifications. By that same token, we would also prohibit eggs from these monitored flocks from being set in hatchers or incubators where eggs from ''U.S. M. Gallisepticum Clean'' or ''U.S. M. Synoviae Clean'' primary breeding flocks are set, since the eggs from a monitored flock would be, from a disease-control perspective, of lesser status than eggs from a flock with clean status.

As a final precaution, chicks from these monitored flocks would have to be boxed in clean boxes and delivered in trucks that had been cleaned and disinfected in order to minimize the possibility that the chicks could be exposed to disease during transport.

Testing of Additional Male Breeding Birds

We are proposing to amend the ''U.S. M. Gallisepticum Clean'' and ''U.S. M. Synoviae Clean'' classifications for meat-type chicken breeding flocks, §§ 145.33(c) and 145.33(e), respectively, by adding a requirement for the testing of a sample of male birds prior to their addition to a participating multiplier breeding flock. Male birds are added to breeding flocks to augment the male fertility of the flock, which tends to decrease over time. Although the birds to be added must already be drawn from a qualified ''clean'' flock, we believe that testing a sample of those birds would serve as an additional safeguard to ensure that the new birds would not have a negative effect on the disease status of the flock to which they would be added.

We would require that a sample of at least 3 percent of the birds to be added, with a minimum of 10 birds per pen, be tested for the classification's disease of concern (*M. gallisepticum* or *M. synoviae*) a minimum of 14 days prior to the date the birds were to be added to the flock. The birds would have to be tested using either a serologic test provided for by § 145.14(b) or with a polymerase chain reaction (PCR)-based procedure approved by the Department as provided by § 147.6. The male birds from which the sample was drawn would be considered to be affected with the disease if a serologic test yielded hemagglutination inhibition titers of 1:40 or higher or if the results of the PCR tested were positive. If such positive results were disclosed, the affected male birds could not be added to the flock and would have to be retested or destroyed in order to prevent the disease from spreading.

Use of Chick Papers

We are proposing to amend § 147.12 to add another environmental sampling procedure for use in monitoring for the presence of salmonella. Specifically, the proposed new procedure would provide for the collection of samples from chick box papers for bacterial examination. Chick box papers are used to line the bottom of chick boxes to catch the meconium droppings produced by the chicks. Chick boxes are used to transport baby poultry from the hatchery to the brooding house for grow-out.

Under the proposed procedure, which would be added to the regulations as § 147.12(c), the Plan participant would collect chick papers from one out of every ten boxes of chicks placed in a brooding house. The Plan participant would have the choice of collecting samples from the papers or sending the chick box papers to a laboratory where the samples would be collected. For Plan participants who choose to collect the samples, the proposed new procedure provides detailed instructions for preventing contamination of the samples, impregnating the sampling pads with double-strength skim milk, sampling the chick box papers, and sealing, storing, and transporting the samples. Likewise, the proposed procedures provide packing and transport instructions for those Plan participants who choose to send the chick box papers to the laboratory for sampling and culturing. In either case, the samples collected from the chick box papers would be cultured at the laboratory for the presence of salmonella.

The collection of samples from chick box papers is, in essence, a smaller-scale version of the drag swab technique already used to collect environmental samples, which is described in § 147.12(a)(3). Like the drag swab sampling, chick box paper sampling would help prevent the spread of salmonella in participating flocks by decreasing the likelihood of false negatives on flock screening tests and reducing the amount of time required for laboratory diagnoses.

Surveillance and Qualification Tests for Turkeys

We are proposing to amend the procedures in § 145.43(c) for the ''U.S. M. Gallisepticum Clean'' classification for turkeys by adding a requirement for surveillance testing. Currently, to qualify a flock for the classification, a random sample of the birds in the flock must be tested when the birds are more than 12 weeks of age. To retain the classification, additional samples of 30 birds from male flocks and 60 birds from female flocks must be tested when the birds in the flock are 28 to 30 weeks of age. We are proposing to follow the week 30 test with continuing surveillance tests conducted every 4 to 6 weeks thereafter. The tests would be conducted on the same 30 male or 60 female sample size as the week 30 test and would provide a means of continually monitoring a turkey breeding flock throughout the laying cycle.

We are also proposing to increase the sample size that must be tested to qualify a turkey flock under § 145.43(d) for the ''U.S. M. Meleagridis Clean'' classification. We would increase the sample size, which currently is set at 60 birds, to 100 birds to make it consistent with the sample size used in the ''U.S. M. Gallisepticum Clean'' and ''U.S. M. Synoviae Clean'' classifications and to provide flockowners with more representative samples of birds that would better reflect the *M. meleagridis* status of their flocks.

Status of Flocks

We are proposing to amend § 147.6 to simplify the description of the procedure that is used to determine the status of flocks that react to tests for *M. gallisepticum*, *M. synoviae*, or *M. meleagridis*. Plan participants have indicated that the current description of the procedure in § 147.6 is somewhat confusing and difficult to interpret. We would, therefore, amend § 147.6 to eliminate duplication and make the procedure easier to follow. The procedure itself, however, would not be substantively changed.

U.S. Sanitation Monitored, Turkeys, Classification

We are proposing to amend the ''U.S. Sanitation Monitored, Turkeys'' classification by removing the requirement for the collection and examination of environmental samples from laying houses following the removal of a flock. We believe this requirement, which is currently located in § 145.43(f)(7), could be removed because the regulations already provide for environmental samples to be collected and examined bacteriologically for salmonella when a flock is 12 to 20 weeks of age (§ 145.43(f)(4)) and again when the flock is 35 to 50 weeks of age and from each molted flock at midlay (§ 145.43(f)(6)).

Because that sampling and testing will have been conducted, and because a house from which a flock has been removed must be thoroughly cleaned and disinfected before a new flock may be placed in the house, we believe that further environmental sampling after a flock has been removed from a house is unnecessary.

U.S. M. Synoviae Clean Classification

We are proposing to add a new § 145.53(d) to establish a new ''U.S. M. Synoviae Clean'' classification for waterfowl, exhibition poultry, and game bird breeding flocks. The classification would be given to qualifying waterfowl, exhibition poultry, and game bird breeding flocks that are free from *M. synoviae* and that are maintained in a manner that prevents *M. synoviae* from being introduced into the flock. The sampling, testing, and other criteria under which waterfowl, exhibition poultry, and game bird breeding flocks would qualify for the proposed ''U.S. M. Synoviae Clean'' classification would be the same as those used in the existing ''U.S. M. Synoviae Clean'' classifications for egg-type chickens (§ 145.23(e)) and meat-type chickens (§ 145.33(e)) and would serve the same purpose.

Miscellaneous

We are also proposing to amend § 145.10 by adding three new illustrative designs to represent the proposed new ''U.S. Salmonella Monitored,'' ''U.S. M. Gallisepticum Monitored,'' and ''U.S. M. Synoviae Monitored'' classifications discussed above.

Finally, we are also proposing to correct an oversight dating back to the last time the regulations were amended. On March 21, 1996, we published a final rule in the Federal Register (61 FR 11515–11525, Docket No. 94–091–2) that amended the regulations to reflect the proposals adopted by the voting delegates to the Plan's 1994 biennial conference. One of those adopted proposals called, in part, for raising from 75 to 150 the minimum number of birds tested to qualify an egg-type chicken or meat-type chicken multiplier breeding flock for ''U.S. M. Synoviae Clean'' status and raising from 50 to 75 the number of birds to be tested each 90 days for the flock to retain ''U.S. M. Synoviae Clean'' status. In the March 1995 final rule, as in the proposed rule that preceded it (60 FR 35343–35353, Docket No. 94–091–1, published July 7, 1995), the number of birds to be tested each 90 days was raised from 50 to 75, but we neglected to raise from 75 to 150 the number of birds to be tested to qualify flocks for ''U.S. M. Synoviae Clean'' status. Therefore, to correct that oversight, we are proposing in this document to amend §§ 145.23(e)(1)(ii) and 145.33(e)(1)(ii) to require that a sample comprised of a minimum of 150 birds be tested for *M. synoviae* when the flock is more than 4 months of age to qualify egg-type chicken and meat-type chicken multiplier breeding flocks for the ''U.S. M. Synoviae Clean'' classification. Increasing the sample size would provide flockowners with more representative samples of birds that would better reflect the *M. synoviae* status of their flocks.

Executive Order 12866 and Regulatory Flexibility Act

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

The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 32nd Biennial Conference. The proposed changes would amend the Plan and its auxiliary provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

The Plan serves as a ''seal of approval'' for egg and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. In all cases, the changes proposed in this document have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability.

Because participation in the Plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program. Nine of the 12 proposed amendments involve minor procedural changes that would have negligible economic consequences. Plan participants could realize some cost savings because the testing requirements for the proposed new ''U.S. M. Gallisepticum Monitored'' and ''U.S. M. Synoviae Monitored'' classifications are not as stringent as the testing requirements for the ''clean'' classifications for *M. gallisepticum* and *M. synoviae*. These savings would, however, likely be offset by the proposed amendments to the ''U.S. M. Gallisepticum Clean'' and ''U.S. M. Synoviae Clean'' programs that would require additional tests for meat-type chicken breeding flocks when spiking males are introduced. Of the 3,979 pullorum-typhoid clean flocks currently participating in the Plan, 2,842 flocks are classified as ''U.S. M. Gallisepticum Clean'' and ''U.S. M. Synoviae Clean;'' the remaining 1,137 flocks are eligible for the proposed new ''U.S. M. Gallisepticum Monitored'' and ''U.S. M. Synoviae Monitored'' programs. However, because participation in Plan programs is voluntary, the Agency could not estimate the number of producers who may participate in the two proposed new ''monitored'' classifications or use the new tests.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 145 and 147 would be amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 145.10 would be amended as follows:

a. In paragraph (e), the words ''and § 145.43(e)'' would be removed and the words ''145.43(e), and § 145.53(d)'' would be added in their place.

b. New paragraphs (o), (p), and (q) would be added to read as set forth below.

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

BILLING CODE 3410–34–P

(o) U.S. Salmonella Monitored. (See § 145.33(i).)

Figure 16

(p) U.S. M. Gallisepticum Monitored. (See § 145.33(j).)

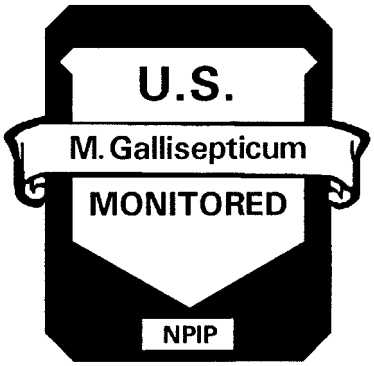

Figure 17

(q) U.S. M. Synoviae Monitored. (See § 145.33(k).)

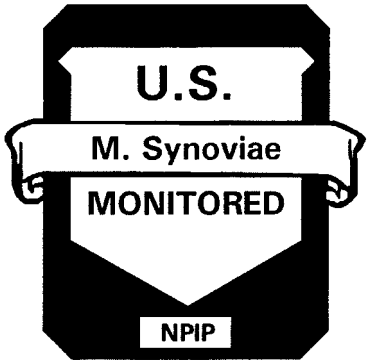

Figure 18

BILLING CODE 3410–34–C

§ 145.23 [Amended]

3. Section 145.23 would be amended as follows:

a. In paragraph (b), in the introductory text, the words ''at the discretion of the official State agency with the concurrence of the Service'' would be removed and the words ''conducted a minimum of 4 weeks after the induction of molt'' would be added in their place.

b. In paragraph (e)(1)(ii), in the introductory text, the words ''75 birds'' would be removed and the words ''150 birds'' would be added in their place.

4. Section 145.33 would be amended as follows:

a. In paragraph (b), in the introductory text, the words ''at the discretion of the official State agency with the concurrence of the Service'' would be removed and the words ''conducted a minimum of 4 weeks after the induction of molt'' would be added in their place.

b. A new paragraph (c)(4) would be added to read as set forth below.

c. In paragraph (e)(1)(ii), in the introductory text, the words ''75 birds'' would be removed and the words ''150 birds'' would be added in their place.

d. A new paragraph (e)(4) would be added to read as set forth below.

e. New paragraphs (i), (j), and (k) would be added to read as set forth below.

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(4) Before male breeding birds may be added to a participating multiplier breeding flock, a sample of at least 3 percent of the birds to be added, with a minimum of 10 birds per pen, shall be tested for *M. gallisepticum* as provided in § 145.14(b) or by a polymerase chain reaction (PCR)-based procedure approved by the Department. The male birds shall be tested no more than 14 days prior to their intended introduction into the flock. If the serologic testing of the birds yields hemagglutination inhibition titers of 1:40 or higher, or if the PCR testing is positive for M. gallisepticum, the male birds may not be added to the flock and must be either retested or destroyed.

* * * * *

(e) * * *

(4) Before male breeding birds may be added to a participating multiplier breeding flock, a sample of at least 3 percent of the birds to be added, with a minimum of 10 birds per pen, shall be tested for M. synoviae as provided in § 145.14(b) or by a polymerase chain reaction (PCR)-based procedure approved by the Department. The male birds shall be tested no more than 14 days prior to their intended introduction into the flock. If the serologic testing of the birds yields hemagglutination inhibition titers of 1:40 or higher, or if the PCR testing is positive for M. synoviae, the male birds may not be added to the flock and must be either retested or destroyed.

* * * * *

(i) *U.S. Salmonella Monitored.* This program is intended to be the basis from which the breeding-hatching industry may conduct a program for the prevention and control of Salmonellosis. It is intended to reduce the incidence of Salmonella organisms in hatching eggs and chicks through an effective and practical sanitation program at the breeder farm and in the hatchery. This will afford other segments of the poultry industry an opportunity to reduce the incidence of Salmonella in their products.

(1) A flock and the hatching eggs and chicks produced from it that have met the following requirements, as determined by the Official State Agency:

(i) The flock shall originate from a source where sanitation and management practices, as outlined in § 145.33(d)(1), are conducted;

(ii) The flock is maintained in compliance with §§ 147.21, 147.24(a), and 147.26 of this chapter;

(iii) If feed contains animal protein, the protein products should be purchased from participants in the Animal Protein Products Industry (APPI) Salmonella Education/Reduction Program. The protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F or above, or to a minimum temperature of 165 °F for at least 20 minutes, or to a minimum temperature of 184 °F under 70 lbs. pressure during the manufacturing process;

(iv) Feed shall be stored and transported in a manner to prevent possible contamination;

(v) Chicks shall be hatched in a hatchery meeting the requirements of §§ 147.23 and 147.24(b) and sanitized or fumigated (see § 147.25 of this chapter).

(vi) An Authorized Agent shall take environmental samples from the hatchery every 30 days; i.e., meconium and chick papers. An authorized laboratory for Salmonella shall examine the samples bacteriologically;

(vii) An Authorized Agent shall take environmental samples as described in § 147.12 of this chapter from each flock at 4 months of age and every 30 days thereafter. An authorized laboratory for Salmonella shall examine the environmental samples bacteriologically;

(viii) Owners of flocks may vaccinate with a paratyphoid vaccine: *Provided,* That a sample of 350 birds, which will be banded for identification, shall remain unvaccinated until the flock reaches at least 4 months of age.

(2) The Official State Agency may use the procedures described in § 147.14 of this chapter to monitor the effectiveness of the egg sanitation practices.

(3) In order for a hatchery to sell products of this classification, all products handled shall meet the requirements of the classification.

(4) This classification may be revoked by the Official State Agency if the participant fails to follow recommended corrective measures.

(j) *U.S. M. Gallisepticum Monitored.* (1) A multiplier breeding flock in which all birds or a sample of at least 20 birds per house has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 20 birds per house shall be tested again at 36 to 38 weeks and at 48 to 50 weeks at a minimum: *And provided further,* That each 20-bird sample should come from two locations within the house (10 from the front half of the house and 10 from the back half of the house). A representative sample of males and females should be sampled. The samples shall be marked ''male'' or ''female.''

(2) A participant handling U.S. M. Gallisepticum Monitored products shall keep these products separate from other products in a manner satisfactory to the Official State Agency: *Provided,* That U.S. M. Gallisepticum Monitored chicks from multiplier breeding flocks shall be produced in incubators and hatchers in which only eggs from flocks qualified under paragraph (j)(1) of this section are set. Eggs from U.S. M. Gallisepticum Monitored multiplier breeding flocks shall not be set in hatchers or incubators in which eggs from U.S. M. Gallisepticum Clean primary breeding flocks qualified under paragraph (c)(1)(i) of this section are set.

(3) U.S. M. Gallisepticum Monitored chicks shall be boxed in clean boxes and delivered in trucks that have been cleaned and disinfected as described in § 147.24(a) of this chapter.

(k) *U.S. M. Synoviae Monitored.* (1) A multiplier breeding flock in which all birds or a sample of at least 20 birds per house has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 20 birds per house shall be tested again at 36 to 38 weeks and at 48 to 50 weeks at a minimum: *And provided further,* That each 20-bird sample should come from two locations within the house (10 from the front half of the house and 10 from the back half of the house). A representative sample of males and females should be sampled. The samples shall be marked ''male'' or ''female.''

(2) A participant handling U.S. M. Synoviae Monitored products shall keep these products separate from other products in a manner satisfactory to the Official State Agency: *Provided,* That U.S. M. Synoviae Monitored chicks from multiplier breeding flocks shall be produced in incubators and hatchers in which only eggs from flocks qualified under paragraph (k)(1) of this section are set. Eggs from U.S. M. Synoviae Monitored multiplier breeding flocks shall not be set in hatchers or incubators in which eggs from U.S. M. Synoviae Clean primary breeding flocks qualified under paragraph (e)(1)(i) of this section are set.

(3) U.S. M. Synoviae Monitored chicks shall be boxed in clean boxes and delivered in trucks that have been cleaned and disinfected as described in § 147.24(a) of this chapter.

(Approved by the Office of Management and Budget under control number 0579–0007)

§ 145.43 [Amended]

5. Section 145.43 would be amended as follows:

a. In paragraph (b), in the introductory text, the words ''at the discretion of the official State agency with the concurrence of the Service'' would be removed and the words ''conducted a minimum of 4 weeks after the induction of molt'' would be added in their place.

b. In paragraph (c)(1), at the end of the paragraph, the words ''and at 4–6 week intervals thereafter'' would be added immediately after the words ''28–30 weeks of age''.

c. In paragraph (d)(1)(i), the words ''60 birds'' would be removed and the words ''100 birds'' would be added in their place.

d. In paragraph (d)(2), at the end of the second sentence, the words ''of this chapter'' would be added immediately after the citation ''§ 147.6(b)''.

e. Paragraph (f)(7) would be removed and paragraph (f)(8) would be redesignated as paragraph (f)(7).

6. Section 145.53 would be amended by adding a new paragraph (d) to read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(d) *U.S. M. Synoviae Clean.* (1) A flock maintained in compliance with the provisions of § 147.26 of this chapter and in which freedom from *Mycoplasma synoviae* has been demonstrated under the criteria specified in paragraph (d)(1)(i) or (d)(1)(ii) of this section.

(i) It is a flock in which a minimum of 300 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a sample of at least 150 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of fewer than 150 birds may be tested at any one time with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock that originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(A) At intervals of not more than 90 days, a sample of 50 birds shall be tested: *Provided,* That a sample of fewer than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period; or

(B) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8 of this chapter.

(2) A participant handling U.S. M. Synoviae Clean products shall keep those products separate from other products in a manner satisfactory to the Official State Agency: *Provided,* That

U.S. M. Synoviae Clean chicks from primary breeding flocks shall be produced in incubators and hatchers in which only eggs from flocks qualified under paragraph (d)(1)(i) or (d)(1)(ii) of this section are set.

(3) U.S. M. Synoviae Clean chicks shall be boxed in clean boxes and delivered in trucks that have been cleaned and disinfected as described in § 147.24(a) of this chapter.

(Approved by the Office of Management and Budget under control number 0579–0007)

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

7. The authority citation for part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

8. Section 147.6 would be amended as follows:

a. Paragraph (a) would be removed and paragraph (b) would be redesignated as paragraph (a).

b. The introductory text of newly redesignated paragraph (a) would be revised to read as set forth below.

c. In newly redesignated paragraph (a)(2), the words ''paragraphs (b)(3), (b)(4), and (b)(5)'' would be removed and the words ''paragraphs (a)(3), (a)(4), and (a)(5)'' would be added in their place.

d. In newly redesignated paragraphs (a)(3), (a)(4), (a)(5), (a)(9), and (a)(10), the words ''paragraph (b)(6)'' would be removed and the words ''paragraph (a)(6)'' would be added in their place.

e. In newly redesignated paragraph (a)(5), in the first sentence, the words ''in conjunction with any of the criteria described in paragraph (a)(1) of this section,'' would be removed and, in the second sentence, the words ''but none of the criteria described in paragraph (a)(1) of this section are evident,'' would be removed.

f. In newly redesignated paragraph (a)(13), the word ''both'' would be removed.

g. A new paragraph (b) would be added and reserved.

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

* * * * *

(a) The status of a flock for Mycoplasma shall be determined according to the following criteria:

* * * * *

9. Section 147.12 would be amended by adding a new paragraph (c) to read as follows:

§ 147.12 Procedures for collecting environmental samples and cloacal swabs for bacteriological examination.

* * * * *

(c) *Chick box papers.* Samples from chick box papers may be bacteriologically examined for the presence of salmonella. The Plan participant may collect the samples in accordance with paragraph (c)(1) of this section or submit chick box papers directly to a laboratory in accordance with paragraph (c)(2) of this section.

(1) Instructions for collecting samples from chick box papers:

(i) Collect 1 chick box paper for each 10 boxes of chicks placed in a house and lay the papers on a clean surface.

(ii) Clean your hands and put on latex gloves. Do not apply disinfectant to the gloves. Change gloves after collecting samples from 10 chick box papers or any time a glove is torn.

(iii) Saturate a sterile 3-by-3 inch gauze pad with double-strength skim milk (see footnote 11 to this section) and rub the pad across the surface of five chick box papers. Rub the pad over at least 75 percent of each paper and use sufficient pressure to rub any dry meconium off the paper. Pouring a small amount of double-strength skim milk (1 to 2 tablespoons) on each paper will make it easier to collect samples.

(iv) After collecting samples from 10 chick box papers, place the two gauze pads used to collect the samples (i.e., one pad per 5 chick box papers) into an 18 oz. Whirl-Pak bag and add 1 to 2 tablespoons of double-strength skim milk.

(v) Promptly refrigerate the Whirl-Pak bags containing the samples and transport them, on ice or otherwise refrigerated, to a laboratory within 48 hours of collection. The samples may be frozen for longer storage if the Plan participant is unable to transport them to a laboratory within 48 hours.

(2) The Plan participant may send chick box papers directly to a laboratory, where samples may be collected as described in paragraph (c)(1) of this section. To send chick box papers directly to a laboratory, the Plan participant shall:

(i) Collect 1 chick box paper for each 10 boxes of chicks placed in a house and place the chick papers immediately into large plastic bags and seal the bags.

(ii) Place the plastic bags containing the chick box papers in a clean box and transport them within 48 hours to a laboratory. The plastic bags do not require refrigeration.

(Approved by the Office of Management and Budget under control number 0579–0007)

Done in Washington, DC, this 4th day of March 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–6025 Filed 3–10–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 209

[Regulations D and I; Docket No. R–0963]

Reserve Requirements of Depository Institutions and Issue and Cancellation of Capital Stock of Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulations D and I, Reserve Requirements of Depository Institutions and Issue and Cancellation of Capital Stock of Federal Reserve Banks, to define the location of a depository institution. The proposed amendments would clarify the Federal Reserve District where a depository institution is eligible for Federal Reserve membership and the location of a depository institution's reserve account. The Board is proposing these changes to facilitate interstate banking.

DATES: Comments must be submitted on or before April 18, 1997.

ADDRESSES: Comments, which should refer to Docket No. R–0963, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel, (202/452–3625) or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired *only,* contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Recent statutory changes have eliminated many barriers to interstate banking.[1] The advent of interstate banking raises questions as to how certain provisions of the Federal Reserve Act (FRA)[2] will apply to banks with interstate branches. Many of these questions are related to a bank's ''location.'' To date, the Board and the Federal Reserve Banks generally have interpreted the term ''location,'' as used in the FRA, to mean the geographic location of a bank, heavily influenced by the location specified in the bank's charter, or if no charter location is specified, the location of the bank's head office. This interpretation, however, may not always make sense in an interstate branching environment, where a bank may have offices in multiple Federal Reserve districts and do most of its business in places other than its charter or head office location. The Board, therefore, is proposing to amend its Regulation D (12 CFR part 204, Reserve Requirements of Depository Institutions) and Regulation I (12 CFR part 209, Issue and Cancellation of Capital Stock of Federal Reserve Banks) to define ''location'' for purposes of the Federal Reserve membership and reserve accounts.

A member bank with interstate branches must be a member of a particular Federal Reserve Bank. The membership question is closely related to other location issues such as where reserve accounts are located and where account entries are posted. Every national bank is required to become a member and stockholder of the Federal Reserve Bank of its district (FRA section 2(1)). State banks may apply to the Board to subscribe to the stock of the Federal Reserve Bank organized within the district in which the applying bank is located (FRA section 9(1)). These provisions suggest that membership is limited to one Federal Reserve Bank and that membership is to be determined by the geographical location of the bank.

A bank must hold reserves at the Federal Reserve Bank of which it is a member or where it maintains an account (FRA section 19(c)(1)). Therefore, a nonmember bank would hold its reserve account at the Reserve Bank where it maintains an account for purposes of check collection and other payments services. FRA section 13(1) provides that the nonmember bank may maintain this clearing account with the Federal Reserve Bank of its district.

Charter or head office location is the *status quo* under the FRA as to where a bank is located for membership purposes and nonmember reserve account purposes. The National Bank Act requires a national bank's organization certificate to state the place where its operations of discount and deposit are to be carried on, designating the state, territory, or district, and the particular county and city, town, or village (12 U.S.C. 22). State laws may be less specific, and the determination of the bank's location may not be ascertainable from the bank's charter.

Under a strict interpretation of the charter/head office rule, a bank could be a member only of the Reserve Bank whose district encompasses the location specified in its charter or, in the case of a state bank with no specific charter location, the location of its head office. For a bank with interstate branches, however, this location may not be the appropriate means of determining where the bank is located for membership or reserve account purposes. An interstate bank may have its main office or do the bulk of its business somewhere other than its charter location and may wish to establish a Federal Reserve Bank relationship closer to its business headquarters. Similarly, a bank holding company with subsidiary banks in multiple Federal Reserve districts that manages those banks as a combined business may wish to centralize operations in a single district. In addition, the Board and the Federal Reserve Banks may find it more efficient to administer a bank's account and perform other functions in a district other than the district encompassing the charter or head office location.

Section 9(1) of the FRA provides that state banks may apply to the Board, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal Reserve Bank organized within the district in which the applying bank is located. Section 2(1) of the FRA requires national banks to become member banks in accordance with the provisions of the FRA, and section 11(i) gives the Board general authority to write rules necessary to perform its duties, functions, and services under the FRA. Accordingly, the Board is proposing to amend Regulation I (Issue and Cancellation of Capital Stock of Federal Reserve Banks) to set forth a definition of ''location'' for the purpose of acquiring Federal Reserve Bank stock. This proposed amendment on the location of a bank for membership purposes also would help answer other member bank location questions related to reserve account maintenance, supervision, and other issues.

The proposed new section to Regulation I would state a general rule that, for membership purposes, a bank is considered to be located in the Federal Reserve district specified in the bank's charter or, if no charter location is specified, the location of its head office. The Board could make exceptions to the general rule for a particular bank after considering certain criteria. Thus, if the bank's location were uncertain or its location based on its charter or head office differed from the location where it conducted most of its business, the Board, after consultation with the relevant Reserve Banks, could designate the appropriate location for membership purposes. (The relevant Reserve Banks would be the Reserve Bank whose district contains the bank's charter or head office location and the Reserve Bank in whose district the bank is proposed to be located.)

One consideration in making this determination would be whether any other laws that would require the bank to have a relationship with a particular Reserve Bank. For example, Massachusetts and Nebraska laws provide that state banks may become members of the Boston and Kansas City Reserve Banks, respectively.[3] The Board could also consider other criteria, such as the business needs of the bank, where the head office of the bank is located, where the bank does the bulk of its business, and the location that would allow the bank, the Board, and the Reserve Banks to perform their functions most efficiently and effectively. For example, the Board might consider the efficiency of bank supervisory functions, account management, and Federal Reserve monetary policy. Generally, these amendments would not affect current relationships between banks and Federal Reserve Banks. A bank that already owns stock in or has an account at a Federal Reserve Bank may, but need not, seek a Board determination to change its location. The Board anticipates that the ''location'' issue will arise principally from mergers of existing banks or other changes in the organization or management of bank holding companies. Ordinarily, the Board expects that ''location'' decisions would be worked out between the Reserve Banks and the bank.

Although the proposed Regulation I amendment would likely be sufficient to determine where a member bank's

[1] *See*, the Riegle-Neal Interstate Banking and Branching Efficiency Act, Pub. L. 103–328, 108 Stat. 2338 (1994).

[2] 12 U.S.C. 221 *et seq.*

[3] Mass. Gen. L. ch. 167F, section 8 (1995) and Neb. Rev. Stat. section 8–130 (1995).

reserve account would be located, the Board is also proposing to amend Regulation D (Reserve Requirements of Depository Institutions) to clarify the location of nonmember bank reserve accounts. Section 19(c)(1) of the FRA provides that depository institutions must hold reserves subject to such rules and regulations that the Board may prescribe. Under this authority, the Board proposes to amend Regulation D to define where banks are considered located for reserve account purposes. The proposed Regulation D amendment is similar to the proposed Regulation I language and would, in effect, assure that nonmember banks are treated comparably to member banks for account location purposes.

Regulation D also applies to Edge and agreement corporations and branches and agencies of foreign banks. Section 25A of the FRA requires Edge corporations to carry reserves in the same amounts as the Board prescribes for member banks and authorizes the Board to write rules governing the operations of such corporations. Section 25 of the FRA also authorizes the Board to require agreement corporations to maintain reserves. Section 7 of the International Banking Act provides that Federal branches and agencies of foreign banks are subject to the FRA's reserve requirement provisions (including section 19(c)) as if they were member banks. That Act also provides that the Board may impose the same requirements on state branches and agencies of foreign banks after consultation and in cooperation with the state bank supervisory authorities. The Board's proposed amendments do not address the location of reserve accounts for these institutions. The Board requests comment on whether it should apply the same or similar criteria for determining the location of reserve accounts for U.S. branches and agencies of foreign banks and Edge and agreement corporations as it does for depository institutions.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or recordkeeping requirements and do not overlap with other federal rules.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all institutions subject to the regulations, regardless of size, but would not impose any significant burden on any institution.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0042, 7100–0087, 7100–0088, and 7100–0175), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR parts 204 and 209. This information is required to evidence compliance with the requirements of the Federal Reserve Act. The respondents are for-profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display a currently valid OMB control number. The OMB control numbers are 7100–0042, 7100–0087, 7100–0088, and 7100–0175.

The proposed amendments are not expected to change the ongoing annual burden. The estimated burden per response varies among the reports from 15 minutes (for tranche allocation reports) to 3.5 hours (for reports of deposits). It is estimated that there are 21,983 respondents with frequency of response per respondent varying from daily to annually. Therefore the total amount of annual burden is estimated to be 1,501,479 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $30,029,580. There is not estimated to be any annual cost burden over the annual hour burden.

Individual responses to all of these data collections except those under OMB control number 7100–0042, which are available to the public, are considered confidential under section 225(b)(4) of the Freedom of Information Act.

Comments are invited on: a. whether the proposed revised collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects

12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 209

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, 12 CFR parts 204 and 209 are proposed to be amended as set forth below.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.3, paragraph (b) is revised to read as follows:

§ 204.3 Computation and maintenance.

* * * * *

(b) *Form and location of reserves.* (1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or agreement corporation shall hold reserves in the form of vault cash, a balance maintained directly with the Federal Reserve Bank in the Federal Reserve district in which it is located, or a pass-through account. Reserves held in the form of a pass-through account shall be considered to be a balance maintained with a Federal Reserve Bank.

(2) (i) For purposes of this section, a depository institution (other than a U.S. branch or agency of a foreign bank) is located in the Federal Reserve district that contains the location specified in the institution's charter or organizing certificate or, if no such location is

specified, the location of its head office, unless otherwise determined by the Board under paragraph (b)(2)(ii) of this section.

(ii) If the location specified in paragraph (b)(2)(i) of this section is, in the Board's judgment, ambiguous or would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, the Board will, after consultation with the relevant Federal Reserve Banks, determine the Federal Reserve district in which the depository institution is located. The relevant Federal Reserve Banks are the Federal Reserve Bank whose district contains the location specified in paragraph (b)(2)(i) of this section and the Federal Reserve Bank in whose district the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the institution, the location of the institution's head office, the locations where the institution performs its business, and the locations that would allow the institution, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively.

* * * * *

PART 209—ISSUE AND CANCELLATION OF CAPITAL STOCK OF FEDERAL RESERVE BANKS (REGULATION I)

3. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 248, 321–338, 486, 1814, 1816.

4. A new § 209.15 is added to read as follows:

§ 209.15 Location of bank.

(a) *General rule.* For purposes of this part, a national bank or a state bank is located in the Federal Reserve district that contains the location specified in the bank's charter or organizing certificate, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (b) of this section.

(b) *Board determination.* If the location of a bank as specified in paragraph (a) of this section is, in the Board's judgment, ambiguous or would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, the Board, after consultation with the relevant Federal Reserve Banks, will determine the Federal Reserve district in which the bank is located. The relevant Federal Reserve Banks are the Federal Reserve Bank whose district contains the location specified in paragraph (a) of this section and the Federal Reserve Bank in whose district the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the bank, the location of the bank's head office, the locations where the bank performs its business, and the locations that would allow the bank, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively.

By order of the Board of Governors of the Federal Reserve System, March 5, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–5963 Filed 3–10–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–06]

Proposed Establishment of Class E Airspace; Thiel, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Thiel, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving Greenville Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–06, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–06''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be change in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Thiel, PA.A GPS 199 Point In Space Approach has been developed for Greenville Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Thiel, PA [New]

Greenville Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°25′27″ N, long. 80°22′34″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Greenville Hospital Heliport, excluding that portion that coincides with the Greenville, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 24, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5903 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–01]

Proposed Establishment of Class E Airspace; South New Castle, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at South New Castle, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point in Space Approach based on the Global Positioning System (GPS), and serving Jameson Memorial Hospital Heliport and St. Francis Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–01, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–01''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at South New Castle, PA. A GPS 052 Point In Space Approach has been developed for Jameson Hospital Heliport and St. Francis Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliports. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 FR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 South New Castle, PA [New]

Jameson Hospital Heliport/St. Francis Hospital Heliport, PA
Point in Space Coordinates
(Lat. 40°59′01″ N, long. 80°21′17″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Jameson Hospital Heliport and St. Francis Hospital Heliport, excluding that portion that coincides with the New Castle, PA Class E airspace area and Grove City, PA Class airspace area.

* * * * *

Issued in Jamaica, New York on February 24, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5912 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–05]

Proposed Establishment of Class E Airspace; Uniontown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal rule would establish Class E airspace at Uniontown, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving Uniontown Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–005, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–05''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Uniontown, PA. A GPS 109 Point In Space Approach has been developed for Uniontown Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Uniontown, PA [New]

Uniontown Hospital Heliport, PA
oint In Space Coordinates
(Lat. 39° 54′10″N, long. 79° 45′38″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Uniontown Hospital Heliport, excluding that portion that coincides with the Connellsville, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 25, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5911 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–18]

Proposed Amendment to Class E Airspace; Marion, VA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Marion, VA. The amendment of a Standard Instrument Approach Procedure (SIAP) at the Mountain Empire Airport based on a Nondirectional Radio Beacon (NDB) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–18, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of

the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Marion, VA. The NDB RWY 26 SIAP for the Mountain Empire Airport has been amended. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA VA E5 Marion, VA [Revised]

Mountain Empire Airport, Marion/Wytheville, VA
(Lat. 36°53′41″N., long. 81°21′00″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Mountain Empire Airport and within 8 miles north and 4 miles south of the 073° bearing from the airport extending from the 10-mile radius to 16 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on February 25, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5910 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–02]

Proposed Establishment of Class E Airspace; East Butler, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at East Butler, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, based on the Global Positioning System (GPS) and serving Butler Memorial Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–02, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–02.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at East Butler, PA. A GPS 339 Point In Space SIAP has been developed to serve Butler Memorial Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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., 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 East Butler, PA [New]

Butler Memorial Hospital Heliport, PA
Point In Space Coordinates
(Lat 40° 51′19″ N, long. 79° 51′52″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Butler Memorial Hospital Heliport, excluding that portion that coincides with the Butler, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 24, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5909 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–10]

Proposed Establishment of Class E Airspace; Jeannette, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Jeannette, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, based on the Global Positioning System (GPS), and serving Monsour Medical Center and Jeannette District Hospital Heliports has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliports. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–10, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–10''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each

substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Avialability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Jeannette, PA. A GPS 114 Point In Space SIAP has been developed to serve Monsour Medical Center and Jeannette District Hospital Heliports. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the heliports. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA PA E5 Jeannette, PA [New]

Monsour Medical Center Heliport and Jeannette District Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°19′49″N, long. 79°37′44″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Monsour Medical Center and Jeannette District Hospital Heliports, excluding that portion that coincides with the Latrobe, PA Class E airspace area and the Monongahela, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 25, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5908 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–15]

Proposed Establishment of Class E Airspace; Friendly, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Friendly, MD. The development of a new Standard Instrument Approach Procedure (SIAP) at Potomac Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–15, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–15''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal

contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Friendly, MD. A GPS Rwy 6 SIAP has been developed for Potomac Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA MD E5 Friendly, MD [New]

Potomac Airport, MD

(Lat. 38°44′52″ N., long. 76°47′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Potomac Airport, excluding the portion that coincides with the Washington, DC, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 24, 1997.

James K. Buckles,

Acting Manager; Air Traffic Division, Eastern Region.

[FR Doc. 97–5907 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AEA–08]

Proposed Establishment of Class E Airspace; Mount Oliver, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Mount Oliver, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving Pittsburgh City Center Hospital Heliport, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–08, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposals. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–08''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal

contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Mount Oliver, PA. A GPS 064 Point In Space Approach has been developed to serve Pittsburgh City Center Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 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, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * * *

AEA PA E5 Mount Oliver, PA [New]

Pittsburgh City enter Hospital Heliport, PA
Point In Space coordinates
(Lat. 40°25′09″ N., long. 79°57′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Pittsburgh City Center Hospital Heliport, excluding that portion that coincides with the Pittsburgh, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on February 24, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5906 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–21]

Proposed Establishment of Class E Airspace; Truckee, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Truckee, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 19 at Truckee-Tahoe Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Truckee-Tahoe Airport, Truckee, CA.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–21, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be

considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) to establish a Class E airspace area to Truckee, CA. The establishment of a GPS SIAP at Truckee-Tahoe Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPSS RWY 19 SIAP and other Instrument Flight Rules (IFR) operations at Truckee-Tahoe Airport, Truckee, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedure (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Truckee, CA [New]

Truckee-Tahoe Airport, CA
(lat. 39°19′12″N, long. 120°28′22″W.)

That airspace existing upward from 700 feet above the surface beginning at lat. 39°10′00″N, long. 119°56′00″W; to lat. 39°02′00″N, long. 120°20′00″W; to lat. 39°02′00″N, long. 120°34′00″W; to lat. 39°21′00″N, long. 120°34′00″W; to lat. 39°21′00″N, long. 120°42′00″W; to lat. 39°35′00″N; long. 120°42′00″W; to lat. 39°35′00″N, 120°23′00″W; to lat. 39°40′00″N, long. 120°16′00″W; to lat. 39°40′00″N, long. 119°56′00″W, thence to the point of beginning, excluding the Reno, NV, Class C and Class E airspace areas, and excluding that airspace with a 1-mile radius of the Homewood Seaplane Base and a 2-mile radius of the Sierraville Dearwater Airport.

* * * * *

Issued in Los Angeles, California, on February 24, 1997.

Leonard A. Mobley,

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

[FR Doc. 97–5905 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 94P–0390 and 95P–0241]

Food Labeling: Health Claims; Availability of FDA Report of Effects of Food Label Health Claim Statements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to April 24, 1997, the comment period for a proposal to amend its regulations on nutrient content claims and health claims to provide additional flexibility in the use of these claims on food products, which published in the Federal Register of December 21, 1995 (66206). In the Federal Register of January 24, 1997 (3635), the comment period for this proposal was reopened to provide interested persons an opportunity to review three studies that are relevant to issues under consideration in this rulemaking. The agency is taking this action in response to requests for an extension to allow interested persons additional time to review these studies and to submit comments.

DATES: Written comments by April 24, 1997.

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

FOR FURTHER INFORMATION CONTACT: Alan S. Levy, Center for Food Safety and Applied Nutrition (HFS–727), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9448.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 24, 1997, FDA announced the availability of a report entitled ''Consumer Impacts of Health Claims: An Experimental Study'' (the FDA Study). FDA advised that the FDA Study bore directly on the issues involving health claims that were raised in a rulemaking that FDA had instituted on December 21, 1995, with a proposal entitled ''Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims'' (the nutrient content/health claim proceeding) (60 FR 66206). FDA also announced the availability of two other studies that it

had received in a comment to a separate rulemaking. Because it might consider the results of these three studies in developing a final rule in the nutrient content/health claim proceeding, FDA also announced that it was reopening the comment period for that rulemaking to provide an opportunity for interested persons to comment on the studies.

FDA has received two requests for an extension of the comment period. The requests were from a trade association, for an extension of 30 days, and from a consumer group, for an extension of 45 days. The request from the consumer group indicated a need to seek outside experts to review and analyze the studies and, if necessary, to conduct survey research. The other, from the trade association whose petition led to the nutrient content/health claim proceeding, noted that the author of the FDA Study had remarked in the study's Executive Summary about the complexity of the study findings and said that it was ''equally complex for interested parties to analyze the research and to comment on the applicability of the findings to the proposed rule.''

After careful consideration, FDA has decided that some additional time is necessary for interested persons to review the results of the FDA Study and other studies and to submit meaningful comments on them. Therefore, FDA is extending the comment period for the proposal for an additional 45 days, until April 24, 1997.

Interested persons may, on or before April 24, 1997, submit to the Dockets Management Branch (address above) written comments regarding the studies that were added to this docket on January 24, 1997. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–6145 Filed 3–7–97; 9:39 am]

BILLING CODE 4160–01–F

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Play Facilities; Notice of Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet on: Wednesday, April 2, 1997, 8:30 a.m. to 5:00 p.m.; Thursday, April 3, 1997, 8:30 a.m. to 5:00 p.m.; Friday, April 4, 1997, 8:30 a.m. to 3:00 p.m.

ADDRESSES: The committee will meet at the Consumer Product Safety Commission, 4330 East-West Highway (North Tower), Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: In February 1996, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. (61 FR 5723, February 14, 1996.) The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by March 24, 1997, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–6028 Filed 3–10–97; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[OPP–00473; FRL–5594–6]

Antimicrobial Rule Development and Establishment of Docket; Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting.

SUMMARY: The Antimicrobials Division (AD) of the Office of Pesticide Programs of EPA is holding a series of stakeholder meetings to obtain views about the antimicrobial rule that is being developed. The rule is being revised in accordance with principles set forth in the Food Quality Protection Act. To ensure that all interested parties can obtain information about activities related to developing this rule, AD is voluntarily opening a docket that will include, but will not be limited to, a summary of major discussions at stakeholder meetings, as well as copies of any documents distributed at these meetings.

DATE: The next stakeholder meetings will take place on Wednesday, March 12 from 10:30 a.m. to 12:30 p.m.; Thursday, April 3 from 2 p.m. to 5 p.m.; Thursday, May 8 from 2 p.m. to 5 p.m.; Tuesday, June 3 from 10 a.m. to 12 noon.

ADDRESSES: The March 12, 1997 meeting will be held in Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. To find out the locations of the other three meetings, please call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Mandula, Antimicrobials Division (7505W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location, telephone, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, 703–308–7378; fax: 703–308–6467; e-mail: mandula.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces a series of public meetings to ensure that all parties interested in the development of antimicrobial rules can obtain

information about activities related to the development of these rules. Additionally, a public record has been established for development of the antimicrobial rule under docket number ''OPP–00473.'' The docket is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 Bay 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. Copies of EPA documents may be obtained by contacting: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection.

Dated: March 5, 1997.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 97–6207 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[PA069–4040b, PA078–4041b, PA083–4043b; FRL–5697–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of Source-Specific RACT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing reasonably available control technology (RACT) on three major sources. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. 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. 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.

DATES: Comments must be received in writing by April 10, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Boylan,(215) 566–2094, at the EPA Region III office or via e-mail at boylan.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 13, 1997.

W. T. Wisniewski, Acting,

Regional Administrator, Region III.

[FR Doc. 97–5975 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[PA 099–4052; FRL–5702–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 15 Percent Plan and 1990 VOC Emission Inventory for the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, for the Philadelphia ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan), also known as rate-of-progress (ROP) requirements of the Clean Air Act. EPA is withdrawing its proposed disapproval of the Philadelphia 15% plan and 1990 emission inventory published in the Federal Register on July 10, 1996. EPA is proposing conditional interim approval because the 15% plan submitted by Pennsylvania for the Philadelphia area requires additional documentation to quantify the 15% emission reduction and relies on the inspection and maintenance (I/M) program that received a conditional interim approval. Finally, the 1990 VOC emissions inventory used in the 15% plan as the baseline for reasonable further progress contains inconsistencies, which must be reconciled by Pennsylvania. EPA is, therefore, proposing conditional approval of the 1990 VOC emission inventory.

DATES: Comments on this proposed action must be postmarked by April 10, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215)566–2180. Questions may also be addressed via e-mail, at the following address: stahl.cynthia@epamail.epa.gov

Please note that while information may be requested via e-mail, only written comments can be accepted for inclusion in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Clean Air Act (the Act or CAA), as amended in 1990, requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by 15% from the 1990 baseline inventory for the area. These 15% plans were due to be submitted to EPA by November 15, 1993, with the reductions to occur within 6 years of enactment of the 1990 Clean Air Act Amendments (i.e. November 15, 1996). Furthermore, the Act sets limitations on the creditability of certain control measures toward reasonable further progress. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g. new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. Furthermore, the Act does not allow credit towards RFP for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in place prior to 1990.

Additionally, section 172(c)(9) of the Act requires ''contingency measures'' to be included in the plan revision. These measures are required to be implemented immediately if reasonable further progress is not achieved, or if the NAAQS standard is not attained under the deadlines set forth in the Act.

In Pennsylvania, two ozone nonattainment areas are subject to the CAA 15% rate-of-progress requirements. These are the Philadelphia severe nonattainment area and the Pittsburgh moderate nonattainment area. Pennsylvania submitted separate SIP revisions for Philadelphia and Pittsburgh. EPA is taking action today only on Pennsylvania's 15% plan submittal (including the 1990 VOC emissions inventory), which addresses the Philadelphia ozone nonattainment area. EPA will act separately on the contingency plan for the Philadelphia 15% plan and the 1990 NOx emissions inventory, at a later date. The Philadelphia severe ozone nonattainment area consists of the following counties in Pennsylvania: Bucks, Chester, Delaware, Montgomery, Philadelphia.

On July 10, 1996, EPA proposed to disapprove the Philadelphia 15% plan that was submitted on January 18, 1995 (61 FR 36320). EPA proposed disapproval of the January 18, 1995 submittal because it assumed credit towards ROP for numerous control strategies which were either not fully adopted, are not creditable towards ROP under the Act, or had not been adequately quantified. EPA could not approve the January 1995 15% plan submittal for Philadelphia as it would have resulted in a ''shortfall'' towards Pennsylvania's RFP demonstration. Also in the July notice, EPA proposed to disapprove the Philadelphia area 1990 emissions inventory estimates used in the 15% plan as the baseline because it differed substantially from Pennsylvania's separate 1990 base year emission inventory SIP submitted in 1992 to EPA. Without justification for these differences in the respective submittals pending before EPA, it cannot approve the revised inventory estimates. The September 12, 1996 submittal by Pennsylvania is intended to address the deficiencies in the original January 1995 Philadelphia 15% plan submittal. Therefore, this rulemaking action withdraws EPA's July 10, 1996 proposed disapproval and instead proposes conditional interim approval of the Philadelphia 15% plan that was submitted in September 1996.

EPA has reviewed the September 12, 1996 Philadelphia area 15% plan submittal and has identified several deficiencies, which prohibit full approval of this SIP, pursuant to section 110 of the Act. A detailed discussion of these deficiencies is included below, in the ANALYSIS portion of this rulemaking action, and also in the technical support document (TSD) prepared by EPA in support of this action. Due to these deficiencies, the 15% plan cannot be assured of achieving the total reductions required by the ROP requirements of the Act. EPA is required to approve this 15% plan as a conditional *interim* approval because it relies on emission reductions from the Pennsylvania vehicle inspection and maintenance (I/M) program. EPA promulgated final conditional *interim* approval of Pennsylvania's I/M program under the National Highway Systems Designation Act of 1995 on January 28, 1997 (62 FR 4004). EPA can only fully approve a 15% plan if the emission control measures relied on by the plan are also fully approved. Because the Commonwealth's I/M program has received only conditional interim approval, EPA is proposing conditional interim approval of the Philadelphia 15% plan as well.

Further information regarding EPA's analysis of the Commonwealth's submittal is contained in the TSD for this action. Copies of the TSD are available upon request from the Regional office listed in the **ADDRESSES** section of this notice. A summary of the EPA's findings follows.

II. Analysis of the SIP Revision

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emission inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile sources, and off-road mobile sources. Pennsylvania submitted a formal SIP revision containing their official 1990 base year emission inventory on November 12, 1992. EPA has not yet taken rulemaking action on that inventory submittal. Pennsylvania has stated that its September 12, 1996 15% plan submittal includes a revised version of the 1990 emission inventory, and is meant to supersede the 1992 emission inventory submittal. Therefore, this rulemaking will address the 1990 VOC emission inventory only as it pertains to the Philadelphia ozone nonattainment area and no further rulemaking action will be taken on the November 12, 1992 emission inventory submittal as it pertains to the Pennsylvania portion of the Philadelphia ozone nonattainment area. The September 1996 submittal of the 1990 emissions inventory contains inconsistencies with the inventory summaries of the 15% plan. Additional information and documentation from Pennsylvania regarding the September 1996 submittal of the Philadelphia 1990 emission inventory is necessary in order for EPA to approve it. EPA has been working with Pennsylvania to compile the necessary documentation to approve the 1990 base year emissions inventory and anticipates the resolution of these issues prior to the final rulemaking. Please refer to the TSD for a specific discussion of the inventory. Therefore, EPA is proposing to conditionally approve the 1990 VOC emission inventory for the Philadelphia ozone nonattainment area that was submitted on September 12, 1996.

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress toward attainment of the ozone standard must

be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% RFP requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to a 15 percent reduction of VOC emissions. Thus, an estimate of VOC emissions growth from 1990 to 1996 is necessary for demonstrating reasonable further progress. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each stationary (point) source or by area source category, since sources typically grow at different rates. Even within a stationary source, individual emission unit emissions may grow at different rates during the same time period. EPA's inventory preparation guidance recommends the following indicators as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: Product output, value added, earnings, and employment. As a last resort, population can also serve as a surrogate indicator.

Pennsylvania's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. Pennsylvania used growth factors from the Bureau of Economic Analysis (BEA) for the point and area sources. For a detailed description of the growth methodologies used by the Commonwealth, please refer to the TSD for this action. Although EPA has identified where the methods used to project growth in the 1996 Philadelphia inventory differ from standard guidance and methodologies, EPA is not conditioning the approval of the 15% plan on the resolution of these issues. The rationale for this is summarized below and in more detail in the TSD. Consequently, EPA is proposing to approve the Commonwealth's 1990–1996 emissions growth projections for the Philadelphia 15% plan.

EPA is accepting the Commonwealth's 15% plan projection for highway vehicle emissions growth that is based on growth in total vehicle miles of travel (VMT) for the region, which the Commonwealth expects to increase by 7.7 million miles per day. In addition, the Commonwealth expects that on-road emissions are projected to decrease by 11.9 tons/day. Emissions from on-highway emissions control measures are calculated separately in the plan (including reductions associated with fleet turnover and the pre-1990 motor vehicle standards) and Pennsylvania indicates that this growth is based solely upon increasing VMT growth. Typically, growth in highway emissions is determined independently of mobile source control strategies. Fifteen percent plans usually indicate what, if any, other factors effect highway emissions growth, other than the previously identified VMT influence. EPA cannot definitively determine how motor vehicle emissions are declining from this data but believes, based on the sample calculation submitted by Pennsylvania, that Pennsylvania's mobile model inputs are correct. Therefore, EPA is proposing to approve the Commonwealth's on-road motor vehicle growth projection.

For the point source categories, Pennsylvania used the Bureau of Economic Analysis (BEA) growth factors to project point source emissions on a point source category basis to 1996. Typically, using these growth factors is an acceptable method of estimating point source growth. However, Pennsylvania operates an emissions bank in the Commonwealth that allows facilities to bank emission reduction credits (ERCs) for subsequent use or sale. In addition, Pennsylvania states specifically in its 15% plan that it is taking VOC emission reduction credit from certain shutdown sources toward the required 15% emission reduction. Other sources that bank their ERCs are being allowed to sell their VOC emission reductions as credits to other sources. These shutdowns all occurred after January 1, 1990. Since the BEA growth factors are devised to account for all economic activity, including the shutdown of facilities (through loss of employment, income, etc.), allowing both the use of the BEA point source growth factors for these source categories where the shutdown occurred and allowing the sources in these categories to sell their emission reduction credits could result in the double counting of emission reductions, which is not allowed. In the General Preamble for the Implementation of Title I of the Clean Air Act Amendments (57 FR 13498, April 16, 1992), EPA addresses the issue of accounting for emission reduction credits by stating that banked emission reduction credits need to be accounted for such that their use is consistent with the area's 15% ROP plan and attainment plan. Where those shutdown credits were being applied to the required 15% emission reduction, Pennsylvania's September 1996 15% plan submittal identified those sources that had shut down. EPA is not conditioning the approval of the Philadelphia 15% plan on the resolution of this double counting issue. EPA will, however, require that this issue be satisfactorily resolved prior to approval of any subsequent air quality plans required for the Philadelphia nonattainment area such as the post-96 plan and attainment demonstration.

C. Calculation of Target Level Emissions

Pennsylvania calculated a ''target level'' of 1996 VOC emissions, per EPA guidance. First, the Commonwealth calculated the non-creditable reductions from the FMVCP program and subtracted those emissions from the 15 percent plan's 1990 inventory estimate. This yields the 1990 ''adjusted inventory''. The emission reduction required to meet the 15% ROP requirement equals the sum of 15 percent of the adjusted inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in-place before 1990. Table 1 summarizes the calculations for the VOC target level for the five counties that make up the Pennsylvania portion of the Philadelphia nonattainment area.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS[1] FOR THE PHILADELPHIA NONATTAINMENT AREA'S 15% PLAN

[Tons/day]

1990 Base Year Inventory	615.56
Adjustments for FMVCP/RVP (pre 1990 program)	33.02
1990 Adjusted Base Year Inventory	582.53
15% Reduction Requirement	87.38
RACT ''fix-ups''	0.84
FMVCP & RVP Reductions	33.02
1990 Adjusted Base Year Inventory	582.53

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS [1] FOR THE PHILADELPHIA NONATTAINMENT AREA'S 15% PLAN—Continued

[Tons/day]

Required Reductions (w/o growth)	121.24
1996 Target Level	494.31
FMVCP & RVP Reductions	−33.02
1990–1996 Emissions Growth	35.41
Required Reductions (w/o growth)	121.24
Total Required Reduction	123.63
Total Reduction Claimed by Pennsylvania	127.91

[1] Emission figures presented here are from the September 12, 1996 submittal. These figures may change once Pennsylvania makes the corrections to the plan to reconcile inventory inconsistencies, etc.

D. Control Strategies in the 15% Plan

The specific measures adopted (either through state or federal rules) for the Philadelphia area are addressed, in detail, in the Commonwealth's 15% plan. The following is a brief description of each control measure Pennsylvania has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Clean Air Act ROP requirement.

E. Creditable Emission Control Strategies

The control measures described below are creditable toward the ROP requirements of the Act. Pennsylvania takes emission credit toward the 15% requirement through implementation of the following required programs: (1) Federal reformulated gasoline, (2) reformulated gasoline—nonroad, (3) I/M FMVCP/Tier I, and (4) Stage II vapor recovery. Pennsylvania also takes emission credit toward the 15% requirement through the implementation of the following programs: (1) Federal architectural and industrial maintenance coating regulation (national rule), (2) treatment, storage and disposal facility (TSDF) controls (hazardous waste rule with air emission reductions), (3) autobody refinishing national rule, (4) consumer and commercial products national rule, and (5) facility shutdowns. For the mobile source measures, which Pennsylvania estimates using a Post-Processor for Air Quality (PPAQ) computer model, limited documentation was provided. The PPAQ model uses MOBILE modeling information as input, and determines total reductions for mobile source control strategies. The Commonwealth has provided some sample calculations used in this modeling, but no detailed documentation of the MOBILE runs. However, EPA has no reason to believe that Pennsylvania's methodology is flawed. Therefore, EPA is proposing to approve the claimed mobile emission reductions.

Further details regarding EPA's review of the Commonwealth's control measures are contained in the TSD for this action.

Architectural and Industrial Maintenance (AIM) Coating

This is a national rule that EPA proposed on June 25, 1995 (61 FR 32729), which expected compliance with the coating requirements by April 1997. Subsequently, EPA was sued over this proposed national rule and negotiated a compliance date of no earlier than January 1, 1998. VOC emissions come from the evaporation of solvents used in the coating process. In a memo dated March 22, 1995 (''Credit for the 15% Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule''), EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. In this memo, EPA stated that although the emission reductions are not expected to occur until April 1997, states will be allowed to use the expected emission reduction credit from this measure in their 15% plans. EPA believes that even though the compliance date has been pushed to January 1, 1998, the emission reductions from the national AIM rule are creditable in state 15% plans.

Use of emissions reductions from EPA's expected national rule is acceptable towards the 15% plan target. Although Pennsylvania states that they are claiming 15% emission reduction credit from this measure in their 15% plan, the figures used to calculate the actual expected emission reduction from this measure results in an emission reduction of 20%, which is EPA's estimate of expected emission reductions from the AIM national rule. Therefore, although the Pennsylvania submittal is inaccurate, the resulting emission reduction credit of 20% from the AIM coating rule is acceptable. A 20% reduction from their 1996 projected uncontrolled AIM emissions results in a 7.28 tons per day (TPD) emission reduction credit (1996 uncontrolled emissions x 20% emission reduction). Since the 1996 uncontrolled emissions are 36.41 TPD, a 20% emission reduction is 7.28 TPD. EPA has determined that 7.28 TPD is creditable from this control measure for the Philadelphia 15% plan.

Treatment Storage and Disposal Facilities (TSDFs)

TSDFs are private facilities that manage dilute wastewater, organic/inorganic sludges, and organic/inorganic solids. Waste disposal can be done by various means including: incineration, treatment, or underground injection or landfilling. EPA promulgated Phase I of the TSDF national rule on June 21, 1990 (55 FR 25454). The Phase II TSDF rule was published in the Federal Register on December 6, 1994 (59 FR 62896) and subsequently amended on February 9, 1996 (61 FR 4903) and November 25, 1996 (61 FR 59932). Final compliance with the Phase II requirements is required by no later than December 8, 1997. Pennsylvania claims an expected VOC reduction of 9.45 TPD from this national rule in one part of the 15% plan submittal; although in the narrative description of the TSDF credit, Pennsylvania claims 10.0 TPD credit. Additionally, from the summary tables (Tables 3.2 and 4.5) of the 15% plan, it is not possible to determine the emissions from this area source category since there is no category specifically labeled as TSDFs. The closest category is one labeled ''Waste Disposal''. The 1996 projected emissions for this category, however, are listed as 22.50 tons per day. Using the figures provided by Pennsylvania in Appendix 3 of the 15% plan, the expected emission reduction from this measure is calculated using the 12.57 TPD projected 1996 emissions and

multiplying this by the control efficiency (94%) and rule effectiveness (80%), resulting in an emission credit of 9.45 TPD. In a May 1993 EPA memorandum, EPA agreed that a 93% emission reduction could be expected from the implementation of the Phase II TSDF rule. Therefore, the creditable emission reduction for this measure is not 9.45 tons/day but 9.35 tons/day (12.57 tons/day 1996 emissions × 0.93×0.80). Pennsylvania must document how it determined the 1990 emissions from this category and calculated the emission reduction credit due to the implementation of this national rule. Provided the emission inventory and projected figures are correct, EPA has determined that the creditable emissions from this control measure, given the inventory information provided by Pennsylvania, is 9.35 TPD. Therefore, only 9.35 TPD of emission reductions from the TSDF rule are creditable toward the ROP requirements of the Act.

Consumer/Commercial Products National Rule

Section 183(e) of the Clean Air Act required EPA to conduct a study of VOC emissions from consumer and commercial products. EPA was then required to list (and eventually) to regulate those product categories that account for 80% of those consumer products emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule—including personal, household, and automotive products. Although EPA intended to issue a final rule covering these products by December 1996, the final rule is now expected to be published in Spring 1997 and require compliance by July 1997. The Commonwealth claims a 20% reduction from the consumer products portion of their 1996 uncontrolled inventory, or a 6.58 tons/day reduction (32.89 tons per day, 1996 projected emissions × 20% emission reduction). EPA has determined that 6.58 TPD is creditable toward the 15% plan requirement.

Autobody Refinishing

Autobody shop emissions come from the painting of damaged vehicles or the reconditioning of old vehicles typically done in an industrial or small business shop. The coatings used emit VOCs in significant amounts and EPA has developed a national rule to address the VOC content in those coatings. In a November 29, 1994 memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule'', EPA set forth policy on the creditable reductions to be assumed from the national rule for autobody refinishing. That memorandum allowed for a 37% reduction from current emissions with an assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). Pennsylvania is claiming a 37% emission reduction, resulting in an overall expected emission reduction of 6.3 tons per day (17.02 tons per day, 1996 projected emissions × 37% emission reduction). EPA has determined that 6.3 TPD is creditable toward the 15% plan requirement.

Shutdown Credits

Pennsylvania is claiming 3.4 tons per day from large stationary sources that have shut down emission units since 1990. Shutdown emission reduction credits are creditable toward a state's 15% plan requirements provided they are surplus, quantifiable, enforceable and permanent. Pennsylvania's regulations (25 Pa. Code Chapter 127.207) require that ERCs generated in the Commonwealth also meet these criteria. Pennsylvania has submitted documentation with the Philadelphia 15% plan showing the 1990 emissions of each of the 23 facilities that are providing either part or all of its shutdown emissions toward the 15% emission reduction requirement. EPA generally agrees with the creditability of the shutdown emissions except for those calculated for Philadelphia Textile Finishers, S.K.F., 3M, and Progress Lighting Co. For Philadelphia Textile Finishers, S.K.F., and Progress Lighting Co., the claimed shutdown credits appear to exceed those emissions reported for these sources in the 1990 base year emissions inventory. EPA cannot allow emission reductions from sources to be credited toward the 15% plan where those emission reduction credits exceed the amount of those sources' 1990 emissions. While the most recent 2 year representative period is used to generate the emissions baseline, for credibility toward the 15% emission reduction, the emissions may not exceed those emitted in 1990; otherwise the emissions cannot be determined to be surplus. The documentation provided for Philadelphia County (prepared by the City of Philadelphia Air Management Services) was in a different format from the other 4 counties in the Philadelphia nonattainment area supplied by DEP and, unlike those DEP documents, does not provide emissions attributed to each of the emission units within a facility. For those facilities within Philadelphia County where only part of the facility's shutdown emissions are being claimed as credit toward the 15% requirement, EPA cannot verify the emissions since the inventory is not provided on an emission unit basis. Pennsylvania must clearly document where the emission reductions from the partial shutdowns are occuring through a more detailed submittal of the 1990 inventory for Philadelphia County. It appears from the information provided that out of the 23 facilities providing shutdown credits, only 5 are total facility shutdowns. These five are all located in Philadelphia County and are: Quality Container Corp., U.S. Mint, Schneider Brothers Co., Monarch Manufacturing Works Inc., and Craftbilt Co. For 3M, the banked emissions listed in the Philadelphia 15% plan contradicts information submitted to EPA via the reasonably available control technology (RACT) requirements under section 182(b) of the Act. In the 3M RACT proposal, the Company has requested that 641.7 tons of VOC per year be banked. Even if 260 working days were used to determine the ton per day emissions for this facility, there are still only banked emissions available at 2.47 tons per day rather than the 4.24 tons per day listed in the 15% plan for this facility. Compared with the facility specific data provided within the Philadelphia 15% plan, the 3M VOC emissions appear to be slightly over estimated in the summary list in Table 6.3 of the 15% plan (4.06 TPD versus 4.24 TPD). At PA DEP's request, EPA has already federally approved 1990 VOC (and NOx) emissions for selected emission units at the United States Steel—Fairless (USX) facility (April 9, 1996, 61 FR 15709). Therefore, PA DEP must ensure that the emission reduction credits claimed for USX in the Philadelphia 15% plan are consistent with the federally approved SIP pertaining to USX. This requires that emissions information on an emission unit basis must be provided for the USX—Fairless facility clearly indicating which units are providing the emission credit in the 15% plan. Pennsylvania must reconcile all inconsistencies between and within the 1990 emission inventory and the 15% plan in order for EPA to approve the 1990 emission inventory. Pennsylvania must ensure that any shutdown emissions applied toward the required 15% emission reduction may not subsequently be used by the Company or the Commonwealth for other purposes. Today's rulemaking action does not supersede any 1990

emission inventory figures previously approved by EPA in source-specific rulemakings.

Federal Reformulated Gasoline

Section 211(k) of the Act requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe or extreme. This gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. As a severe area, Philadelphia benefits from the emission reductions from this program. Pennsylvania claims a VOC emission reduction of 26.48 tons per day from this measure. EPA has determined that this is a creditable emission reduction toward the 15% requirement.

Reformulated Gasoline—Nonroad

The use of reformulated gasoline will also result in reduced emissions for both exhaust and evaporative emissions from off-road engines such as outboard motors for boats and lawn mower engines. Pennsylvania claims a VOC emission reduction of 0.59 tons per day from this measure. EPA has determined that this is a creditable emission reduction toward the 15% requirement.

Stage II Vapor Recovery

EPA approved Pennsylvania's Stage II vapor recovery regulation on December 13, 1994 (60 FR 63938). This final approval followed a limited approval/limited disapproval rulemaking action that was published in the Federal Register on June 13, 1994 (59 FR 30302). The federally approved Stage II regulation requires the use of vapor recovery nozzles at gas stations through a phased compliance schedule but the last group of stations (pumping less than 100,000 gallons of gasoline per month) were required to comply with this requirement by no later than February 8, 1994 in all moderate and above ozone nonattainment areas. Pennsylvania claims a 17.02 tons per day VOC emission credit from the implementation of this regulation in the 5-county Philadelphia area. EPA has determined that this credit to be reasonable and acceptable.

Tier I Federal Motor Vehicle Control Program

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Act was amended in 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. The EPA agrees with the Commonwealth's projected emission reductions. Due to the three-year phase-in period for this program, and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Pennsylvania claimed a reduction of 1.0 tons/day from this post-1990 Federal Motor Vehicle Control Program. Although Pennsylvania has not provided EPA with all the documentation necessary to verify this emission reduction credit, EPA has no reason to believe that Pennsylvania's methodology is inaccurate. Therefore, EPA is proposing to accept the emission reduction credit claimed for this measure.

Inspection and Maintenance Program

Section 182(b)(1) of the CAA requires that states containing ozone nonattainment areas classified as moderate or above prepare State Implementation Plans (SIPs) that provide for a 15 percent VOC emissions reduction by November 15, 1996. Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties with these enhanced I/M programs, only a few states are currently actually testing cars using their original enhanced I/M protocols.

On September 18, 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides states with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval where necessary, and set up the infrastructure to perform the testing program precludes states that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many states upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under CAA § 182(b)(1), and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA believes that it is no longer possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow states that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996. EPA published the final conditional interim approval of the Pennsylvania I/M program on January 28, 1997 (62 FR 4004).

Specifically, EPA will propose approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable. To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

In the case of Philadelphia, the Pennsylvania program has submitted a 15% SIP that would achieve the amount of reductions needed from I/M by November 1998. The Pennsylvania I/M program is an annual program with implementation required to begin no later than November 15, 1997. Pennsylvania has submitted a 15% SIP for Philadelphia that includes control measures that are creditable toward the 15% plan. Emission reductions in the Philadelphia nonattainment area resulting from the implementation of the RFG, Stage II, and from implementation of FMVCP—Tier I have already occurred. EPA believes that this SIP contains all measures, including enhanced I/M, that achieves the required reductions as soon as practicable for this nonattainment area.

EPA has examined other potentially available SIP measures to determine if they are practicable for the Philadelphia severe ozone nonattainment area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. EPA proposes to determine that the SIP contains the appropriate measures. For the Philadelphia area, as a severe ozone nonattainment area that is required to implement a large number of control measures, there is no combination of additional control measures that can be implemented prior to the end of 1997

that would achieve the emission reductions equivalent to I/M. The Commonwealth has recently concluded the Southeast Pennsylvania Stakeholders Group process that will result in recommendations to the Governor of Pennsylvania as to the control measures that should be implemented in the Philadelphia nonattainment area in order to reach attainment of the ozone national ambient air quality standard. The stakeholders final report and recommendation to the Governor was released on January 16, 1997. For the Philadelphia 15% plan, the Commonwealth has chosen to implement the I/M program in the Philadelphia nonattainment area, which is expected to produce a 49.74 ton per day emission reduction beginning in late 1997. The details of this analysis are contained in the accompanying TSD.

SUMMARY OF CREDITABLE EMISSION REDUCTIONS FOR THE PHILADELPHIA OZONE NONATTAINMENT AREA

[Tons/day]

Required Reduction for the Philadelphia area	123.64
Creditable Reductions:	
Shutdown credits [1]	3.40
AIM Coatings Rules	7.28
Consumer/Commercial Products	6.58
TSDF Controls	9.35
Autobody refinishing	6.30
Stage II vapor recovery	17.02
Federal Reformulated gasoline	26.48
Reformulated gasoline—nonroad	0.59
FMVCP (Tier I)	1.08
Inspection and Maintenance (I/M)	49.74
Total	127.82

[1] The emission reductions from this program have not been substantiated by Pennsylvania.

III. Proposed Action

The EPA has evaluated this submittal for consistency with the Clean Air Act, applicable EPA regulations, and EPA policy. On its face, this RFP plan for Philadelphia achieves the required 15% VOC emission reduction to meet the requirements of section 182(b)(1) of the Act. While all the emissions inventory figures have not been substantiated and the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA has determined that the submittal for Philadelphia contains enough of the required structure to warrant proposing conditional interim approval.

In light of the above deficiencies, EPA is proposing to conditionally approve this SIP revision, which includes the 15% plan and the 1990 emission inventory, under section 110(k)(4) of the Act. The submittal does not fully satisfy the requirements of section 182(b)(1) of the Act regarding the 15% reasonable further progress plan or section 182(a)(1) of the Act regarding emission inventories. Since the September 1996 Philadelphia 15% plan submittal supersedes the previous 15% plan submittal, EPA is withdrawing its July 10, 1996 proposed disapproval of the Philadelphia 15% plan and is, instead, proposing conditional interim approval of the plan that was submitted on September 12, 1996.

Today's notice of proposed rulemaking begins a 30-day clock for the Commonwealth to make a commitment to EPA to correct the major elements of the SIP that EPA considers deficient, by date certain, within 1 year of conditional approval. These elements are described as follows. In order to make this 15% plan approvable, Pennsylvania must fulfill the following conditions by no later than 12 months after EPA's final conditional interim approval:

(1) Reconcile the 1990 VOC point source emissions inventory with all the appendices, tables and narratives throughout the 15% document, wherever emissions are cited;

(2) After establishing consistent figures as described in (1) above, provide sample calculations for point source 1990, 1990 adjusted, and 1996 projected emissions showing how each of these figures were obtained (The level of documentation must be equivalent to that required for approval of a 1990 emissions inventory as described in the emission inventory documents at the beginning of the technical support document.);

(3) Provide additional documentation for the emissions for those sources categories where credit is claimed (shutdowns, TSDFs);

(4) Provide a written commitment to remodel and submit the enhanced I/M program as implemented in the Philadelphia nonattainment area in accordance with EPA guidance (December 23, 1996 memo entitled ''Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance); and

(5) Fulfill the conditions listed in the enhanced I/M SIP rulemaking notice (proposed October 3, 1996, 61 FR 51638; final January 28, 1997, 62 FR 4004).

After making all the necessary corrections to establish accuracy and consistency in the emission inventory, baseline and projected figures, and the creditability of chosen control measures, Pennsylvania must demonstrate that 15% emission reduction is obtained in the Philadelphia nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance issued pursuant to section 182 (b)(1). Resolution of the issues pertaining to banked emissions and projected growth is not a condition of this 15% plan approval (although documentation for the amount of shutdown credit is). Satisfactory resolution of these issues will be required for any approval of subsequent air quality plans. If the Commonwealth does not make the required written commitment to EPA within 30 days, EPA is today proposing in the alternative that this SIP revision be disapproved.

EPA and Pennsylvania have worked closely since the September 1996 submittal in order to resolve all the issues necessary to fully approve the Philadelphia 15% plan. Pennsylvania is aware of the deficiencies cited above and is currently working to amend the Philadelphia 15% plan to address the above-named deficiencies. While these deficiencies currently remain, EPA believes that all issues will be resolved no later than 12 months after EPA's final conditional interim approval of the Philadelphia 15% plan. EPA will consider all information submitted as a supplement or amendment to the September 1996 submittal prior to any final rulemaking action. In addition, since Congress passed the National Highway Systems Designation Act of 1995, which amended federal I/M program requirements and granted states authority to revise their I/M programs, and Pennsylvania has utilized that authority to revise its I/M program, revision of the 15% plan to reflect the I/M program changes is expected. When the Commonwealth submits an amended 15% plan, EPA will review the whole Philadelphia 15% plan and the Philadelphia 1990 base year emissions inventory, including its amendments, for compliance with the requirements of the Act. At that time, EPA will re-propose rulemaking action based on the merits of the original submittal and its amendments.

Nothing in today's action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP 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.

This proposed conditional interim approval action for the Pennsylvania

15% plan and the 1990 VOC emission inventory for Philadelphia 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 E.O. 12866 review.

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 the rule 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 populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Philadelphia 15% plan and 1990 VOC emission inventory will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: February 28, 1997.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 97–6019 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[AMS–FRL–5701–7]

Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Today's proposal was originally published as a Direct Final Rule (61 FR 58618, November 15, 1996), but the amendments were removed due to the receipt of an adverse comment.

On January 12, 1993, EPA published a final rule establishing interim durability procedures used for demonstrating compliance with light duty vehicle and light duty truck emission standards, applicable in model years 1994–1996 only. On July 18, 1994, EPA published a direct final rule extending the applicability of the original rule through model year 1998. Today's proposal extends the applicability of those durability procedures indefinitely. The Agency intends to conduct a separate rulemaking to implement a long-term durability program; however, such an action will be linked to others as part of a broad-based streamlining initiative for all vehicle emission compliance activities. It is difficult to predict with any precision when this subsequent action will occur. The Agency currently estimates that new compliance regulations will be promulgated such that they would become effective no earlier than the 2000 model year. Because the current durability regulations expire at the end of the 1998 model year, failure to proceed with today's proposal would result in less effective and inefficient durability regulations beginning with the 1999 model year, and may create timing problems for manufacturers planning to use alternate durability processes in the 1999 model year, since the durability demonstration procedures would revert back to requiring the AMA mileage accumulation process, a procedure which requires 100,000 miles to be accumulated on a prototype vehicle.

DATES: Comments must be received on or before April 25, 1997. A public hearing will be held on March 27, 1997. Request to present oral testimony must be received at least 5 days prior to the hearing.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–93–46 at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Materials relevant to this proposed rule have been placed in Docket No. A–93–46. Additional documents of relevance may be found in Docket No. A–90–24. The docket is located at the above address in room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and noon, and between 1:30 p.m. and 3:30 p.m. A reasonable fee may be charged by EPA for copying docket materials. The public hearing will be held at the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI. The hearing will begin at 10 am and

continue until all testimony has been presented.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4502.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The preamble and regulatory language are available electronically on the Technology Transfer Network (TTN), an electronic bulletin board system operated by EPA's Office of Air Quality, Planning and Standards. Users are able to access and download TTN files of their first call. After logging on to TTN, to navigate through the system for the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free of charge, except for the cost of the phone call. TTN bulletin board system: (919) 541–5742 (1200–14400 pbs, no parity, 8 data bits, 1 stop bit)

Voice Helpline: (919) 541–5384
Internet access address: TELNET ttnbbs.rtpnc.epa.gov.
Off-line: Mondays from 8:00 AM to 12:00 Noon ET.

1. Technology Transfer Network Top Menu <T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards); Command: T.
2. TTN TECHNICAL INFORMATION AREAS: <M> OMS—Mobile Sources Information; Command: M.
3. OMS BBS—MAIN MENU: <K> Rulemaking & Reporting; Command: K.
4. [1] Light Duty; File Area 2 LD VEHICLE DURABILITY.

At this stage, the system will list all available files. To download a file, select a transfer protocol which will match the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Internet Access: The preamble, regulatory language and regulatory support document are also available electronically from the following EPA internet sites:

World Wide Web: http://www.epa.gov/OMSWWW/
Gopher: gopher://gopher.epa.gov/
Follow menus for: Offices/Air/OMS
FTP: ftp://ftp.epa.gov/
Change Directory to pub/gopher/OMS

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Background

On January 12, 1993, the Agency published interim procedures for motor vehicle manufacturers to use in demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks (58 FR 3994). That rule, referred to hereafter as the ''RDP–I'' rule, made the interim procedures applicable to model years 1994 through 1996, but not thereafter.

The Agency initially planned to promulgate a separate durability regulation, hereafter referred to as ''RDP II'' which was to become effective beginning with the 1997 model year. However, that became impractical due to lead time constraints for manufacturers wishing to certify vehicles in that model year and the uncertainty that sufficient lead time existed for implementation in the 1998 model year as well.

Consequently, the Agency promulgated a direct final rule which extended the applicability of the RDP–I interim rulemaking through model year 1998 (59 FR 36368). This was intended to provide manufacturers with timely notice of the regulations applicable for certifying vehicles through model year 1998 while EPA continued work on preparing and finalizing further technical and procedural improvements to the RDP II program. While work on the RDP–II rule proceeded, various new events and actions precluded the timely completion of this project. In particular, in 1995 the Agency undertook an initiative to revise the current vehicle compliance program, including the RDP–I durability protocols. The revisions would be implemented via new compliance program regulations which are projected to become effective with the 2000 model year. These regulations would replace the RDP–I interim procedures as well as other activities associated with vehicle compliance. Because these regulations are still in the development stage, it is not possible to provide manufacturers with a firm effective date. Therefore, the Agency believes today's proposal of indefinitely extending the existing RDP–I regulations will satisfy the industry's need to plan its durability programs and will retain the current durability options which can be improved upon in future rulemaking actions.

II. Environmental Effects and Economic Impacts

A. Economic Impacts

This proposal extends an existing program without modification, and as such, the Agency does not expect any new economic impacts over and above those described in the interim rulemaking. In general, the RDP–I interim rulemaking projected annual cost savings with respect to the previously existing program of approximately $8.6 million, and although this number is highly dependent upon the interaction of several variables, all modeled scenarios resulted in some level of savings. A complete description of those impacts is contained in 58 FR 3994 (January 12, 1993).

B. Environmental and Cost-Benefit Impacts

The RDP I rulemaking revised testing and administrative procedures necessary to determine the compliance of light-duty vehicles and light-duty trucks with the Tier 1 emission standards promulgated in June 1991, and no environmental benefit was claimed over and above that already accounted for in the Tier 1 rule. Today's proposal will similarly claim no environmental benefit. A detailed discussion of the Tier 1 environmental impacts can be found in 56 FR 25734 (June 5, 1991).

III. Public Participation

The Agency originally published this proposal as a direct final rule because it viewed it as non-controversial and anticipated no adverse public comments. Because an adverse comment was received, the direct final rule amendments have been removed in a separate action published elsewhere in this issue of the Federal Register.

A. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal. All comments, with the exception of proprietary information should be addressed to the EPA Air Docket Section, Docket No. A–93–46 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for

consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least five days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first served basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier and will be scheduled on a first come, first served basis following the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any statement or material to be presented at the hearing in advance of the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Advanced copies should be submitted to the listed contact person.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket Section, Docket No. A–93–24 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

IV. Statutory Authority

Authority for the actions promulgated in this final rule is granted to EPA by sections 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a), and 5 U.S.C. 553(b)).

V. Administrative Designation

Under Executive Order 12866, the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 19980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 amended these requirements. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

The Agency has determined that this action will not have an adverse impact on small entities. Moreover, this regulation does not create any new regulatory requirements.

Therefore, under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VII. Reporting and Recordkeeping Requirements

This regulation does not impose any new information collection requirements and results in no change to the currently approved collection. The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

VIII. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of

regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

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

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: March 4, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 of chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

§ 86.094–13 [Amended]

2. In § 86.094–13, paragraphs (a)(1), (c)(1), (d)(1), (e)(1), and (f)(1) are amended by revising the words ''1994 through 1998'' to read ''1994 and beyond''.

§ 86.094–26 [Amended]

3. In § 86.094–26, paragraphs (a)(2), (b)(2)(i), and (b)(2)(ii) are amended by revising the words ''1994 through 1998'' to read ''1994 and beyond''.

[FR Doc. 97–5877 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 92

[FRL–5701–3]

Emission Standards for Locomotives and Locomotive Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Hearing and Additional Information.

SUMMARY: EPA is changing the date on which it will hold the public hearing for the Notice of Proposed Rulemaking (NPRM) that proposed emission standards for locomotives and locomotive engines (published February 11, 1997, 62 FR 6365). EPA is also providing public notice today of the availability of additional information regarding test procedures for locomotives and locomotive engines.

DATES: A public hearing will be held on April 18, 1997, starting at 10:00 a.m. Persons wishing to present oral testimony are requested to notify EPA on or before April 11, 1997 to allow for an orderly scheduling of oral testimony. Written comments must be received on or before May 19, 1997.

ADDRESSES: Written comments are to be addressed to: EPA Air and Radiation Docket, Attention: Docket No. A–94–31, Room M–1500, Mail Code 6102, U.S. EPA, 401 M Street, SW., Washington DC 20460.

A public hearing for the NPRM will be held at the Clarion Hotel (313–665–4444), which is located at 2900 Jackson Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: For information on this rulemaking contact: Charles Moulis, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 741–7826, Fax: (313) 741–7816. Requests for hard copies of the rulemaking documents should be directed to Carol Connell at (313) 668–4349.

SUPPLEMENTARY INFORMATION:

Test Procedures

EPA proposed emissions standards and test procedures for new locomotives and new engines used in locomotives on February 11, 1997 62 FR 6365. Today, EPA is announcing the release of additional test procedure information. The Agency has determined that it would be beneficial for the public to made aware of this information, and thus has placed copies of this information in the public docket for this rulemaking. Included in this information is an EPA staff-level document detailing a variation of the proposed set of test procedures. This variation is being considered by EPA staff for incorporation in the final rule for the control of emissions from new locomotives and new engines used in locomotives. It should be noted that the information being made available today is not expected to significantly affect EPA's assessment of the environmental benefits or the cost of compliance.

Request for Comments

Interested parties may submit written comments (in triplicate if possible) for EPA consideration. The comments are to be addressed to: EPA Air and Radiation Docket, Attention: Docket No. A–94–31, Room M–1500, Mail Code 6102, U.S. EPA, 401 M Street, SW., Washington DC 20460. Should a commenter wish to provide confidential business information (CBI) to EPA, such CBI should NOT be included with the information sent to the docket. Materials sent to the docket should, however, indicate that CBI was provided to EPA. One copy of CBI, along with the remainder of the written comments, should be sent to Charles Moulis at the address provided in **FOR FURTHER INFORMATION CONTACT**.

EPA will also accept oral comments at the hearing for the previously published NPRM. Any person desiring to present testimony regarding this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person listed above of such intent at least seven days prior to the day of the hearing to allow for orderly scheduling of the testimony. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing prior to the scheduled hearing date, in order for EPA staff to give such material full consideration. Such advance copies should be submitted to the contact person listed above. The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket Section, Docket No. A–94–31 (see **ADDRESSES**).

Availability of Documents

The additional test procedure information, as well as the previously published NPRM (and related documents), are available in the public

docket as described under **ADDRESSES** above and are also available electronically via the internet and on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m. Monday through Friday, except on government holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying docket materials. The TTN service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call using a personal computer and modem per the following information:

TTN BBS: 919–541–5742 (1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Helpline: 919–541–5384
TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking & Reporting
<6> Non-Road
<3> File area #3...Locomotive Emission Standards

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol. If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Rulemaking documents may be found on the internet as follows:

World Wide Web

http://www.epa.gov/omswww

FTP

ftp://ftp.epa.gov Then CD to the /pub/gopher/OMS/ directory

Gopher

gopher://gopher.epa.gov:70/11/Offices/Air/OMS

Alternatively, go to the main EPA gopher, and follow the menus:

gopher.epa.gov
EPA Offices and Regions
Office of Air and Radiation
Office of Mobile Sources

List of Subjects in 40 CFR Part 92

Environmental protection, Air pollution control, Railroads, Reporting and recordkeeping requirements.

Dated: March 3, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–6210 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 242, and 252

[DFARS Case 96–D020]

Defense Federal Acquisition Regulation Supplement; Duty-Free Entry

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify guidance regarding duty-free entry of supplies and implementation of the North American Free Trade Agreement (NAFTA).

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before May 12, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D020 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule does not constitute a change in policy. It is intended to clarify and consistently apply the existing policy regarding duty-free entry of supplies under DoD contracts. DoD generally waives duty on defense supplies (end products or components) from qualifying countries; on eligible products subject to the Trade Agreements Act or the North American Free Trade Agreement; and on other foreign supplies if the cost of processing the duty-free entry certificates will not exceed the amount of duty that would be paid. This proposed rule more accurately focuses the prescriptions for use of duty-free entry clauses; limits the required listing of supplies under the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, to foreign end products that are neither qualifying country supplies nor eligible end products; adds an Alternate I to the clause at 252.225–7035, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate, for contracts under $50,000, and expands Alternate I of the clause at 252.225–7036, North American Free Trade Agreement Implementation Act, to clarify that, when under $50,000, the offered price of Mexican end products must include any applicable duty; expands the clause at 252.225–7037, Duty-Free Entry-Eligible End Products, to cover all eligible end products, not only NAFTA country supplies; and clarifies that notification to the Commander, Defense Contract Management Command, is not required in those instances where shipments are consigned to a contractor's plant and no duty-free entry certificate is required.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it does not constitute a change in policy but is a clarification of implementing procedures pertaining to duty-free entry of supplies and the North American Free Trade Agreement. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D020 in correspondence.

C. Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements contained in the clause at DFARS 252.225–7003 are approved under OMB Clearance Number 0704–0187; the other information collection requirements contained in DFARS Part 225 and the associated clauses in Part 252 are approved under OMB Clearance Number 0704–0229. It is estimated that the clarifying amendments proposed in this rule will result in a reduction of 486,000 hours in the paperwork burden approved under OMB Clearance Number 0704–0187, and a reduction of 8,200 hours in the paperwork burden approved under OMB Clearance Number 0704–0229.

List of Subjects in 48 CFR Parts 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 242, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.105 is amended by revising the introductory text; by removing paragraph (3); by redesignating paragraphs (1) AND (2) as paragraphs (2) and (3), respectively; by adding a new paragraph (1); by revising newly designated paragraphs (2) and (3) in the introductory text; by revising newly designated paragraph (3) (ii); and by revising Examples 2 and 3 of Table 25–1 to read as follows:

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105. For additional procedures relating to evaluation of offers, see 225.303(b) Balance of Payments Program), 225.603 (customs and duties), and 225.872–4 (qualifying country sources).

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term ''nonqualifying country offer'' also may apply to an offer that is not an eligible offer under a trade agreement (see Example 4 of Table 25–1, Evaluation).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 of Table 25–1, Evaluation).

* * * * *

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see Example 3 of Table 25–1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25–1, Evaluation), evaluate nonqualifying country offers without the 50 percent factor.

* * * * *

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25–1, Evaluation.)

* * * * *

TABLE 25–1.—EVALUATION

EXAMPLE 2	
Alternate I: Duty Not Exempted for Nonqualifying Country Offers:	
Nonqualifying Country Offer (including $100 duty)	$6,000
Domestic Offer	8,500
Qualifying Country Offer	7,800
Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).	
Alternate II: Duty Exempted:	
Nonqualifying Country Offer	$880,500
Domestic Offer	950,000
Qualifying Country Offer	880,000
Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.	

EXAMPLE 3	
Alternate I: Duty Not Exempted for Nonqualifying Country Offers:	
Nonqualifying Country Offer (including $150 duty)	$9,600
Qualifying Country Offer	9,500
Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.	
Alternate II: Duty Exempted:	
Nonqualifying Country Offer (including $1,000 duty)	$880,500
Qualifying Country Offer	880,000
Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.	

225.109–70 [Amended]

3. Section 225.109–70 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

4. Section 225.408 is amended by redesignating paragraph (a)(3) as

paragraph (a)(3)(A), and by adding paragraph (a)(3)(B) to read as follows:

225.408 Solicitation provisions and contract clauses.

(a) * * *

(3) * * *

(B)(i) Use the basic provision when the basic clause at 252.225–7036 is used.

(ii) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

* * * * *

5. Section 225.602 is amended by revising the introductory text of paragraph (3) to read as follows:

225.602 [Amended]

* * * * *

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DOD will issue duty-free entry certificates for—

* * * * *

6. Section 225.603 is amended by redesignating the text preceding paragraph (b) as paragraph (a), and by revising it to read as follows:

225.603 Procedures.

(a) *General.*

(i) *Preaward.*

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers not offers of eligible products under a trade agreement, should contain applicable duty.

(C) Apply the evaluation procedures for the Buy American Act in accordance with 225.105.

(ii) *Award.* Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225–10, Duty-free Entry, and the clause at 252.225–7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the contract clause at 252.225–7008, Supplies to be Accorded Duty Free-Entry.

(iii) *Postward.*

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.602(3)(i) and the clause at 252.225–7009, Duty-Free Entry-Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.602(3)(ii) and the clause at 252.225–7037, Duty-Free Entry-Eligible End Products; and for other foreign supplies in accordance with the policy at 225.602(3)(iii) on contracts containing the clause at FAR 52.225–10, Duty-Free Entry, or (following to the extent practicable the procedures required by the clause at FAR 52.225–10, Duty-Free Entry, and the clause 252.225–7010, Duty-Free Entry-Additional Provisions) on other contracts—

(1) That fall within one of the following categories:

(i) Direct purchases of foreign supplies under a DOD prime contract, whether title passes at point of origin or at destination in the United States; provided the contract states that the final price is exclusive of duty.

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenue between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(iii)(A)*(1)(iii)* of this section.

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract or fixed-price subcontract interevenes; provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(2) For which the supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government; and duty will be paid if such supplies or any portion thereof are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) For which such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

* * * * *

7. Section 225.605–70 is revised to read as follows:

225.605–70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225–7009, Duty-Free Entry-Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for services involving the furnishing of supplies, except for solicitations and contracts for supplies for exclusive use outside the United States.

(b) Use the clause at 252.225–7037, Duty-Free-Entry Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225–7007, Trade Agreements, or the clause at 252.225–7036, North American Free Trade Agreement Implementation Act, is used.

(c) Use the clause at 252.225–7010, Duty-Free Entry-Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225–10, Duty-Free Entry.

(d) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225–10, Duty-Free Entry.

(e) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225–10, Duty-Free Entry.

PART 242—CONTRACT ADMINISTRATION

8. Section 242.302 is amended by revising paragraph (a)(19) to read as follows:

242.302 Contract administration functions.

(a) * * *

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 252.212–7001 is amended in paragraph (b) of the clause by revising the entries ''252.225–7001'' and ''252.225–7036'' to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.

* * * * *

(b) * * *

_____252.225–7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a–10d, E.O. 10582).

* * * * *

_____252.225–7036 North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 note). (____ Alternate I)

* * * * *

10. Section 252.225–7001 is amended by revising in the clause the first sentence of paragraph (c), and by revising paragraph (d) to read as follows:

252.225–7001 Buy American Act and Balance of Payments Program.

* * * * *

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate, the Buy American Act—Trade Agreements—Balance of Payments Program Certificate, or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate. * * *

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for its purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

11. Section 252.225–7003 is amended by revising the introductory text; by revising the clause in paragraph (a) and by removing paragraph (d). The revised text reads as follows:

252.225–7003 Information for duty-free entry evaluation.

As prescribed in 252.605–70(d), use the following provision:

* * * * *

(a) Is the offer based on furnishing any supplies (i.e., end items, components, or material) of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry-Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry-Eligible End Products clause of this solicitation?

Yes ( ) No ( )

* * * * *

12. Section 252.225–7007 is amended by revising paragraph (d) of the clause to read as follows:

252.225–7007 Trade Agreements.

* * * * *

(d) the offered price of qualifying country end products and the offered price of designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of end products listed under paragraph (c)(2)(vi) of the Buy American Act-Trade Agreements-Balanced of Payments Program Certificate provision of the solicitation, or the offered price of U.S. made end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each offer of a U.S. made end product that does not meet the definition of ''domestic end product'' is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

13. Section 252.225–7008 is revised to read as follows:

252.225–7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605–70(e), use the following clause:

Supplies To Be Accorded Duty-Free Entry

In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty-free entry for all qualifying country supplies (end products and components) and all eligible end products subject to applicable trade agreements (if this contract contains the Trade Agreements clause or the North American Free Trade Agreement Implementation Act clause), the following foreign end products that are neither qualifying country end products nor eligible end products under a trade agreement, and the following nonqualifying country components, are accorded duty-free entry:

_____

_____

_____

(End of clause)

14. Section 252.225–7009 is amended by revising the section title, introductory text, clause title, and paragraphs (b), (c)(f)(2)(iv), (f)(2)(vii), and (g)(1) to read as follows:

252.225–7009 Duty-free entry-qualifying country supplies (end products and components).

As prescribed in 225.605–70(a), use the following clause:

Duty-Free Entry—Qualifying Country Supplies (End Products and Components)

(a) * * *

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end item to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.

* * * * *

(f) * * *

(2) * * *

(iv)(A) For direct shipments to a U.S. military installation, the notation: ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York 10305–5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.''

(B) in cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent, or broker who will notify Commander, Defense Contract Management Command (DCMC), New York, for execution of the duty-free certificate.

* * * * *

(vii) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) * * *

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any

customs forms required for the entry of foreign supplies in connection with DOD contacts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Custom regulations.

* * * * *

252.225–7010 [Amended]

15. Section 252.225–7010 is amended in the introductory text by revising ''225.605–70(d)'' to read ''225.605–70(c)''; in the first sentence of paragraph (e) introductory text of the clause by revising ''Defense Contract Management Area Operations (DCMAO)'' to read ''Defense Contract Management Command (DCMC)''; in paragraph (e)(3) by revising ''DCMAO'' to read ''DCMC'' and by revising ''DLA8DP'' to read ''S3605A''; and in the second sentence of paragraph (f) by revising ''DCMAO'' to read ''DCMC''.

16. Section 252.225–7035 is amended by revising in the clause paragraphs (a), (b), and (c)(2); and by adding Alternate I to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

* * * * *

(a) *Definitions.* ''Domestic end product,'' ''foreign end product,'' ''NAFTA country end product,'' and ''qualifying country end product'' have the meanings given in the North American Free Trade Agreement Implementation Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. For line items subject to NAFTA, offers of qualifying country end products or NAFTA country end products will be evaluated without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) * * *

(2) The offeror must identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canada) end products:

(insert line item number)
(insert country of origin)

(ii) The offeror certifies that the following supplies qualify as NAFTA country end products:

(insert line item number)
(insert country of origin)

(iii) The following supplies are other foreign end products:
(insert line item number)
(insert country of origin)

(End of provision)

Alternate I

As prescribed in 225.408(a)(3)(B)(ii), substitute the phrase ''Canadian end product'' for the phrase ''NAFTA country end product'' in paragraph (a); and substitute the phrase ''Canadian end products'' for the phrase ''NAFTA country end products'' in paragraphs (b) and (c)(2)(ii) of the basic clause.

17. Section 252.225–7036 is revised to read as follows:

252.225–7036 North American Free Trade Agreement Implementation Act.

North American Free Trade Agreement Implementation Act

(a) *Definitions.*

(1) ''Components,'' ''domestic end product,'' ''end product,'' ''nonqualifying country,'' ''qualifying country,'' and ''qualifying country end product'' have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(2) ''Foreign end product'' means an end product other than a domestic end product.

(3) ''North American Free Trade Agreement (NAFTA) country'' means Canada or Mexico.

(4) ''NAFTA country end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) The Contracting Officer has determined that the North American Free Trade Agreement Implementation Act of 1993 applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees on duty. The offered price of foreign end products listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I

As prescribed in 225.408(a)(4)(B)(ii), substitute the following paragraphs (a)(4), (c), and (d) for paragraphs (a)(4), (c), and (d) of the basic clause:

(a)(4) ''Canadian end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(b) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(c) The offered price of qualifying country end products, or Canadian end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product

listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

18. Section 252.225–7037 is revised as follows:

252.225–7037 Duty-free entry-eligible end products.

As prescribed in 225.605–70(b), use the following clause:

Duty-Free Entry-Eligible End Products

(a) *Definitions.*

''Eligible end product,'' as used in this clause, means—

(1) ''Designated country end products,'' ''Caribbean Basin country end product,'' or ''NAFTA country end product,'' as defined in the Trade Agreements clause of this contract;

(2) ''NAFTA country end product,'' as defined in the North American Free Trade Agreement Implementation Act clause of this contract; or

(3) ''Canadian end product,'' as defined in the North American Free Trade Agreement Implementation Act, Alternate I, clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that—

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number, and delivery order if applicable.

(ii) Number of the subcontract/purchase order for foreign supplies if applicable.

(iii) Identification of carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York 10305–5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.''

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent, or broker who will notify Commander, DCMC, NY, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMC, NY, is required).

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) Preparation of customs forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DOD contracts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark on the exterior of all packages—

(i) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;'' and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the eligible country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for eligible and products;

(7) Total dollar value of the subcontract for eligible end products;

(8) Expiration date of the subcontract for eligible and products;

(9) List of the items purchased;

(10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(End of clause)

[FR Doc. 97–5992 Filed 3–10–97; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 62, No. 47
Tuesday, March 11, 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

Forest Service

White Pass Ski Area Expansion, Gifford Pinchot National Forest, Lewis County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal to modify the present special use permit of the White Pass Company, present operator of the White Pass Ski Area. This modification would authorize expansion into approximately 300 acres in Pigtail Basin, located between the current permit area and Hogback Basin, for the purpose of providing additional skiing opportunities. This action is proposed in response to an application by the White Pass Company to expand the permit area on the Packwood Ranger District of the Gifford Pinchot National Forest. The White Pass Company current permit is administered by the Naches Ranger District of the Wenatchee National Forest. The proposed action is at White Pass, Washington, approximately 50 miles west of the city of Yakima. The purpose of the EIS will be to develop and evaluate a range of alternatives including a No Action Alternative, and possible additional alternatives to respond to issues identified during the scoping process. The proposed project will be in compliance with the direction in the Wenatchee National Forest Land and Resource Management Plan (March 1990), as amended by the Northwest Forest Plan (April 1994), which provides the overall guidance for management of the area. The Agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this proposal must be received by April 12, 1997.

ADDRESSES: Submit written comments and suggestions to Sonny J. O'Neal, Forest Supervisor, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Jim Pena, District Ranger, Naches Ranger District, 10061 U.S. Highway 12, Naches, WA 98937; Phone 509–653–2205.

SUPPLEMENTARY INFORMATION: The Wenatchee National Forest is initiating this action in response to a request filed by the White Pass Company on January 7, 1997, to expand their current ski area permit boundary.

This is White Pass Company's second attempt to expand the skiing opportunities at White Pass. Their first proposal was submitted after passage of the Washington Wilderness Bill of 1984. The Bill, while increasing Wilderness lands within Washington by well over one million acres, also realigned the Wilderness boundary southwest of White Pass in the expressed interest of skiing potential in this area. White Pass Company's initial expansion proposal encompassed 1,300 acres, which included Hogback Basin and the development of three chairlifts. Subsequent litigation regarding the Forest's decision to authorize the expansion in combination with concerns regarding new wildlife information led to withdrawal of that decision by the Wenatchee National Forest Supervisor in 1992.

This new proposal has been developed following (1) the review and understanding of the issues raised during the first EIS attempt, (2) new environmental standards such as the Northwest Forest Plan and Aquatic Conservation Strategy, (3) recent discussions with interested groups regarding the new proposed action and (4) the continued search for an expansion location that best fits into the social, cultural, environmental and skier needs categories.

A range of alternatives will be considered, including a No Action Alternative. Other alternatives will be developed in response to issues received during scoping. The major issues that have been identified to date include the following: Air quality, cultural/historic/religious uses, scenery, socioeconomics, wildlife habitat, and the cumulative effects of the proposed action with uses within the current permit area.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect and cumulative effects and connected actions.).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for review by October 1997. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organization, and members of the public for their review and comment. The EPA will publish a notice of availability of the draft EIS in the Federal Register. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the Federal Register. It is very important that those interested in the management of the Wenatchee and Gifford Pinchot National Forests participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's 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 connections.

Vermont Yankee Nuclear Power Corp. v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS 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.

The final EIS is scheduled to be completed by March 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations and policies considered in making the decision regarding this proposal. Sonny J. O'Neal, Forest Supervisor, Wenatchee National Forest is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulation (36 CFR part 215).

Dated: May 4, 1997.

G. Elton Thomas,

Natural Resources Group Leader.

[FR Doc. 97–5958 Filed 3–11–97; 8:45 am]

BILLING CODE 3410–11–M

Canyons Forest Health Project, Tahoe National Forest, Sierra and Nevada Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement for harvesting in densely stocked timber stands exhibiting insect-related mortality and reduced health. The harvesting is proposed on approximately 2,500 acres within an 8,000-acre analysis area. The salvage, sanitation, and thinning of the stands is proposed to improve the forest health and remove some of the dead material contributing to the fuel loading in the area. Also being proposed are fuels treatments, site preparation, reforestation, timber stand improvement, and road construction, reconstruction, and decommissioning.

These actions were recently analyzed and decided within a larger project analysis area called the Worn Mill Environmental Assessment/Biological Evaluation (EA/BE) (September, 1996). Only about half of the area analyzed under the Worn Mill EA/BE document was put under contract (Toucan Timber Sale) in December 1996 prior to expiration of the Rescissions Act, Pub. L. 104–19. Since the decision on the Worn Mill EA/BE has also subsequently expired, the second half of the Worn Mill analysis area that was identified as needing forest health treatment will now be re-analyzed under the Canyons Environmental Impact Statement (EIS).

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the analysis should be received in writing by April 1, 1997.

ADDRESSES: Send written comments to Caryn Huntt, Project Leader, Truckee Ranger District, 10342 Highway 89 N, Truckee, CA 96161.

FOR FURTHER INFORMATION CONTACT: Caryn Huntt, Project Leader, Natural Resources Department, Truckee Ranger District, (916) 587–3558.

SUPPLEMENTARY INFORMATION: A draft environmental impact statement is expected to be available for agency and public review by April, 1997. A 45-day comment period will follow the publication of the notice of availability of the draft EIS in the Federal Register. Al comments will be analyzed and a final EIS and accompanying record of decision (ROD) will be issued. The final EIS should be available by June, 1997.

Written comments from the public should be submitted as indicated at the beginning of this notice. Comments would be most useful if sent by the date specified and if they clearly address the issues and alternatives related to the proposed action.

The proposed action being considered includes salvage, sanitation, and thinning of the timber stands to address forest health concerns east of Boca and Stampede reservoirs and on the adjacent flats and slopes near Truckee, California.

Preliminary issues connected with the proposal include forest health, water quality, wildlife habitat, and wildfire/fuels concerns.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the 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. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these 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 draft environmental impact statement 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 draft environmental impact statement 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. The responsible official for this environmental impact statement and decision is John H. Skinner, Forest Supervisor, Tahoe National Forest, 631

Coyote Street, P.O. Box 6003, Nevada City, CA 95959.

Dated: March 3, 1997.

John H. Skinner,

Forest Supervisor, Tahoe National Forest.

[FR Doc. 97–5920 Filed 3–10–97; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Thursday, March 27, 1997, at the South Bend Public Library, 304 South Main Street, South Bend, Indiana 44601. The purpose of the meeting is to discuss civil rights issues of interest and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 3, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–5970 Filed 3–10–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–812]

Calcium Aluminate Flux From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from one respondent, Lafarge Aluminates (LA), and its U.S. subsidiary, Lafarge Calcium Aluminates, Inc. (LCA) (collectively, Lafarge), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on calcium aluminate (CA) flux from France. This review covers one manufacturer/exporter of the subject merchandise to the United States, Lafarge, for the period June 1, 1995 through May 31, 1996.

We have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the differences between the United States Price (USP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3019.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1994, the Department published in the Federal Register (59 FR 30337) the antidumping duty order on CA flux from France. On June 6, 1996 (61 FR 28840), the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on CA flux from France. In accordance with 19 CFR 353.22(a)(1)(1995), we received a timely request for review from a respondent, Lafarge. We published a notice of initiation of this antidumping duty administrative review on August 8, 1996 (61 FR 41373), for the period June 1, 1995 through May 31, 1996.

The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of CA flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 2523.10.0000. The HTSUS subheading is provided for convenience and U.S. Customs' purposes only. The written description of the scope of this order remains dispositive.

Constructed Export Price

In calculating Lafarge's USP, the Department treated respondent's sales as constructed export price (CEP) sales, as defined in section 772(b) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser after importation into the United States.

We calculated CEP based on packed or bulk, ex-U.S. warehouse or delivered prices to unaffiliated customers in the United States. We made deductions from the gross unit price, where appropriate, for the following movement charges: loading material at the Fos plant in France, foreign inland freight from plant to port, foreign brokerage and handling costs, international freight, marine insurance, U.S. brokerage and handling, inland freight from port to U.S. warehouse, unloading charges, inland freight to processors, demurrage and stop-off charges, and U.S. freight from the warehouse to the customer, in accordance with section 772(c)(2)(A) of the Act. Pursuant to section 772(d)(1)(B), we also deducted credit expenses, product liability insurance, and travel expenses for technical services. Pursuant to section 772(d)(1)(D), we deducted U.S. indirect selling expenses, and inventory carrying costs incurred in the United States. We did not deduct indirect selling expenses (*i.e.*, administrative expenses, inventory carrying costs, personnel costs for technicians) incurred by LA in France because these expenses were for commercial activity taking place outside the United States. We also deducted commissions in accordance with section 772(d)(1)(A) of the Act.

We also deducted an amount for profit in accordance with section 772 (d)(3) of the Act.

Level of Trade and CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, the Department will, to the extent practicable, calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the NV to account for the difference in levels of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and at the level of trade of the comparison market sale used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made when two conditions exist: First, NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and second, the data available do not provide an appropriate basis for a level-of-trade adjustment.

To implement these principles in this case, we requested information on the selling activities of Lafarge in each of its markets. We asked Lafarge to establish any claimed levels of trade based on the selling activities provided to each proposed customer group, and to document and explain any claims for a level-of-trade adjustment. In its October 11, 1996 submission, and subsequent supplemental response of February 5, 1996, Lafarge explained that LA, acting as the national distributor in France for Lafarge's CA flux products, sold to distributors and end users in the home market. Lafarge's U.S. CEP sales were made through its subsidiary, LCA, which performed the same basic role in the United States that LA performed in the home market, selling to distributors and end users. For both channels of distribution the selling activities in both the home market and the United States were similar.

To determine whether separate levels of trade existed in the United States and the home market, we reviewed the selling activities associated with each channel of distribution claimed by Lafarge. Since all of Lafarge's U.S. sales were CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the home market Lafarge reported two customer groups: end-users and distributors. We reviewed the sales activities between these two types of customers in the home market. There were no significant distinctions in the selling activities performed for end-users and distributors in the home market. The distribution systems, inventory maintenance, sales order processing, and sales agreements were very similar across customer groups in each market. Because channels of distribution do not qualify as separate levels of trade when the selling activities performed for each customer class are sufficiently similar, we concluded that Lafarge's home market sales to end-users and resellers were made at the same level of trade since the aggregate selling activities performed for both channels of distribution were essentially identical.

We then examined the level of trade of the CEP sales in the U.S. market (*i.e.*, the level of trade for sales from LA to LCA). Based on Lafarge's responses to the Department's questionnaires, we concluded that the selling activities of the level of trade of the home market sales were sufficiently different from the level of trade of Lafarge's CEP sales to establish a different level of trade between the two markets. For example, the level of trade of the CEP sales did not involve extensive technical assistance, credit insurance, inventory maintenance, and sales administration costs. Since the same level of trade as that of the CEP did not exist in the home market, we could not determine whether there was a pattern of consistent price differences between the levels of trade, in accordance with section 773(a)(7)(A) of the Act, based on Lafarge's home market sales of merchandise under review. Further, we do not have the information which would allow us to examine pricing patterns of Lafarge's sales of other products, and there is no other respondent's or other producer's information on the record to analyze whether the adjustment is appropriate. See SAA at 830.

Because the data available do not provide an appropriate basis for making a level-of-trade adjustment, but the level of trade in the home market is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act. To calculate the CEP offset, we deducted from NV the general and administrative expenses, inventory carrying costs, and salaries and overhead expenses associated with technical service reported by Lafarge as home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses incurred in the United States as determined under section 772(d)(1)(D) of the Act.

Further Manufacture

In calculating CEP, where appropriate, we deducted all value added in the United States, including the proportional amount of profit attributable to the value added, pursuant to section 772(d)(2) and 772(d)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than costs associated with the imported products. To determine the costs incurred to produce the further manufactured products, we included (1) the costs of manufacture, (2) movement and repacking expenses, (3) selling, general and administrative expenses, and interest expenses. Profit was calculated by deducting all applicable costs, charges, adjustments, and expenses from the sales price. The total profit was then allocated proportionally to all components of cost. We deducted only the profit attributable to the value added in the United States. No other adjustments to CEP were claimed or allowed.

Normal Value (NV)

A. Viability

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of the foreign like product sold in the exporting country by Lafarge was sufficient to permit a proper comparison with Lafarge's sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(B)(i) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i), we based NV on the prices at which the foreign like products were sold to the first unaffiliated purchaser for consumption in the exporting country.

B. Model Match

In accordance with section 771(16)(B) of the Act, we considered all products produced by the respondent, covered by

the description in the Scope of the Review section above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Since there were no sales of identical merchandise in the home market to compare to U.S. sales, we matched U.S. sales to the most similar foreign like product based on the physical characteristics reported by the respondent, Lafarge. Among similar products sold in the home market we chose that product with the least difference in size (i.e., the type of crushing and screening performed) and packaging between the home market and the U.S. product. In any case, we did not use any home market product which, when compared to the U.S. model, resulted in a difference-in-merchandise adjustment in excess of 20 percent of the total cost of manufacture of the U.S. model.

C. Price to Price Comparisons

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product.

We based NV on the price at which the foreign like product is sold for consumption in the exporting country to the first unaffiliated party, in the usual commercial quantities and in the ordinary course of trade in accordance with sections 773(a)(1)(B)(i) and 773(a)(5) of the Act. Where appropriate, we deducted loading expenses, inland freight, credit, credit insurance, travel expenses incurred by technicians, product liability insurance, and packing. We deducted indirect selling expenses incurred in the home market up to the amount of the U.S. indirect selling expenses. We also made adjustments for home market indirect selling expenses to offset U.S. commissions. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Lafarge Aluminates ..	06/01/95–05/31/96	7.30

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between CEP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon the publication of the final results of this administrative review for all shipments of CA flux from France entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Lafarge will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 37.93 percent, the rate established in the LTFV investigation (59 FR 5994, February 9, 1994).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 3, 1997.

Robert. S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–6039 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, The Timken Company (Timken), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (TRBs), from Romania. The review covers shipments of the subject merchandise to the United States during the period June 1, 1995, through May 31, 1996.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On June 19, 1987, the Department published in the Federal Register (52 FR 23320) the antidumping duty order on TRBs from Romania. On June 6, 1996, the Department published in the Federal Register (61 FR 28840, 28841) a notice of opportunity to request an administrative review of this antidumping duty order. On June 28, 1996, in accordance with 19 CFR 353.22(a), the petitioner requested that we conduct an administrative review of the following firms: Tehnoimportexport, S.A. (TIE); Tehnoforestimportexport; S.C. Rulmenti S.A. Alexandria (Alexandria); S.C. Rulmentul S.A. Brasov (Brasov); S.C. Rulmenti S.A. Birlad (Birlad); S.C. Rulmenti Grei S.A. Ploiesti (Ploiesti); S.C. Rulmenti S.A. Slatina (Slatina); and S.C. URB Rulmenti S.A. Suceava (Suceava); S.C. Ocromfer SRL; A. Hartrodt; Shanghai Yawa Printing Machinery Co., Ltd.; Famous Freight Forwarding Company; Accord Shipping Pte Ltd.; ABCO International Freight (Hong Kong) Ltd.; Thompson Russel & Ulrich Semiconductor Technologies Inc.; Votainer Nederland B.V.; Sunrise Bearing and Technology Ltd.; Destrex Dora AFV SA DE CV AVE; Madison Metals Corp.; Euro Precision Bearings and Commodities, Inc.; William McGinty Company; Associated Dynamics Inc.; Universal Automotive Trading Company, Ltd.; Stevens Graphics; Eurasia Freight Service Inc.; ABCO International Freight Inc.; Ameru Trading del Peru, S.A.; and Madison Bearing Co. We published the notice of initiation of this antidumping duty administrative review on August 8, 1996 (61 FR 41373, 41374). On September 12, 1996, the petitioner withdrew its request that the administrative review include Ameru Trading del Peru.

Scope of This Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

This review covers 28 companies and the period June 1, 1995 through May 31, 1996. Of the 28 companies for which petitioner requested a review, only TIE made shipments of the subject merchandise to the United States during the period of review (POR). Alexandria and Brasov produced the merchandise sold by TIE to the United States, but have stated that they did not ship TRBs directly to the United States. The Department has received information from the Government of Romania and other respondents stating that they did not produce or sell TRBs subject to this review.

Verification

As provided in section 782(i) of the Act, we verified information provided by TIE and Brasov, using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Separate Rates

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (''Sparklers''),* 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (''Silicon Carbide''),* 59 FR 22585 (May 2, 1994). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of de jure absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts.

TIE is the only company covered by this review with shipments of the subject merchandise to the United States during the POR. Therefore, TIE is the only firm for which we have made a determination of whether it should receive a separate rate. We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to TIE according to the criteria identified in *Sparklers* and *Silicon Carbide*. For a further discussion of the Department's preliminary determination that TIE is entitled to a separate rate, see *Memorandum to Edward Yang, Office Director, AD/CVD Enforcement Group III, dated February 25, 1997: Antidumping Administrative Review of Tapered Roller Bearings from Romania: Assignment of a Separate Rate for Tehnoimportexport, S.A. in the 1995/96 review,* which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Export Price

Information on the record indicates that TIE was the only Romanian exporter of the subject merchandise to the United States during the POR. For sales made by TIE, the Department used export price, in accordance with section 772(a) of the Act, in calculating U.S. price. We calculated export price based on the price to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight and ocean freight. We used surrogate information from Indonesia to value foreign inland freight for reasons explained in the ''Normal Value'' section of this notice.

Normal Value

For merchandise exported from an NME country, section 773(c)(1) of the Act provides that the Department shall determine NV using factors of production methodology if available

information does not permit the calculation of NV using home market or third country prices under section 773(a) of the Act. In every case conducted by the Department involving Romania, Romania has been treated as an NME country. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we calculated NV in accordance with section 773(c) of the Act and § 353.52 of the Department's regulations. In accordance with section 773(c)(3) of the Act, the factors of production utilized in producing TRBs include, but are not limited to—(a) hours of labor required, (b) quantities of raw materials employed, (c) amounts of energy and other utilities consumed, and (d) representative capital cost, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the factors of production, to the extent possible, using the prices or costs of factors of production in market economy countries that are—(a) at a level of economic development comparable to that of Romania, and (b) significant producers of comparable merchandise.

We determined that Indonesia is at a level of economic development comparable to that of Romania. We also found that Indonesia is a producer of bearings. Therefore, we have selected Indonesia as the primary surrogate country. For a further discussion of the Department's selection of surrogate countries, see *Memorandum to the File: Antidumping Administrative Review of Tapered Roller Bearings from Romania: Selection of a surrogate country in the 1995/96 review,* dated February 27, 1997, which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

For purposes of calculating NV, we valued the Romanian factors of production as follows:

- Where materials used to produce TRBs were imported into Romania from market economy countries, we used the import price to value the material input. To value all other direct materials used in the production of TRBs, we used the import value per metric ton of these materials into Indonesia for the period January 1994 through September 1994 as published in the Indonesian *Foreign Trade Statistical Bulletin—Imports,* and adjusted, as appropriate, with the wholesale price index inflator to place these values on an equivalent basis. We made adjustments to include freight costs incurred between the suppliers and the TRB factories, using freight rates obtained from the public version of the May 10, 1996 and July 15, 1996 submissions of P.T. Multi Raya Indah Abadi, respondent in the antidumping case *Melamine Institutional Dinnerware from Indonesia,* which is on file in the Central Records Unit (B099 of the Main Commerce Building). We also made an adjustment for scrap steel which was sold by the producers.
- For direct labor, we used the Indonesian average daily wage and hours worked per week for the iron and steel basic industries reported in the 1994 *Special Supplement to the Bulletin of Labour Statistics,* published by the International Labour Office.
- For factory overhead, selling, general and administrative expenses, and profit, we could not find a value for the bearings industry in Indonesia. Therefore, we used information provided to the Department by the U.S. Embassy in Jakarta, Indonesia in the antidumping duty investigation of *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* because the pipe fittings industry is a similar metal manufacturing industry.
- To value packing materials, where materials used to package TRBs were imported into Romania from market-economy countries, we used the import price to value the material input. To value all other packing materials, we used the import value per metric ton of these materials for the period January 1994 through September 1994 (and adjusted with the wholesale price index inflator to place these values on an equivalent basis), as published in the Indonesian *Foreign Trade Statistical Bulletin—Imports.* We adjusted these values to include freight costs incurred between the suppliers and the TRB factories.
- To value foreign inland freight, we used freight rates obtained from public versions of submissions to the Department in the antidumping case *Melamine Institutional Dinnerware from Indonesia,* as indicated above.

Currency Conversion

We made currency conversions in accordance with Section 773A(a) of the Act. In this case, we used average monthly exchange rates published by the International Monetary Fund in *International Financial Statistics.*

Non-Shippers

The following companies stated that they did not have shipments to the United States during the POR: S.C. Rulmentul S.A. Brasov, S.C. Rulmenti S.A. Birlad, S.C. Rulmenti S.A. Slatina, S.C. Rulmenti S.A. Alexandria, S.C. Rulmenti Grei S.A. Ploiesti, Votainer Nederland B.V., Sunrise Bearing and Technology Ltd., A. Hartrodt, Shanghai Yawa Printing Machinery Co., Ltd., Famous Freight Forwarding Company, ABCO International Freight (Hong Kong) Ltd., William McGinty Company, Associated Dynamics Inc., Stevens Graphics, Eurasia Freight Service, Inc., and ABCO International Freight Inc. Additionally, the Government of Romania stated that TIE was the sole exporter to the United States, and that therefore the Romanian companies Tehnoforestimportexport, S.C. Ocromfer SRL, and S.C. Rulmenti S.A. Suceava did not export to the United States during the POR. We received no responses to our questionnaire from Universal Automotive Trading Company, Ltd., Euro Precision Bearings and Commodities, Inc., Thompson, Russel & Ulrich Semiconductor Technologies Inc., and Accord Shipping Pte Ltd. We were unable to locate Madison Bearing Company, Madison Metals Corporation, and Destrex Dora AFV SA DE CV AVE.

We confirmed that none of the aforementioned companies shipped TRBs to the United States with the United States Customs Service. Therefore, we are treating all of these companies as non-shippers for this review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Tehnoimportexport, S.A	6/1/95–5/31/96	8.05
Non-shippers ...	6/1/95–5/31/96	*7.67

*No shipments during the POR, but never determined to merit a separate rate. Therefore, we applied the Romania-wide rate established in the most recent segment of the proceeding.

Parties to the proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of TRBs from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for TIE will be the rate we determine in the final results of review; (2) for the other companies named above which had no shipments during the POR and which were not found to have separate rates, Tehnoforestimportexport, Alexandria, Brasov, Barlad, Ploiesti, Slatina, and Suceava, and for all other Romanian exporters, the cash deposit rate will be 7.67%, the Romania-wide rate established in the most recent segment of the proceeding; and (3) for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5895 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

Centers for Disease Control and Prevention; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 96–116. Applicant: Centers for Disease Control and Prevention, Mailstop F17, 4770 Buford Hwy, N.E., Atlanta, GA 30341–3724. Instrument: Mass Spectrometer, Model VG AutoSpec. Manufacturer: Micromass, Ltd., United Kingdom. Intended Use: See notice at 61 FR 66017, December 18, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) High sensitivity and resolving power, continuously variable to 80 000 (10% valley definition) in El mode and (2) extended mass range to 2000 at 8keV accelerating potential. The National Institutes of Health advises in its memorandum dated November 25, 1996 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–6041 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

Federal Highway Administration; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 96–124. Applicant: Federal Highway Administration, McLean, VA 22101–2296. Instrument: ACFM Crack Microgauge, Model U9. Manufacturer: Technical Software Consultants, Ltd., United Kingdom. Intended Use: See notice at 62 FR 979, January 7, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a 5 KHz drive coil and two directionally sensitive pickup coils employing alternating current field measurement to detect and size structural defects. A U.S. Department of Energy laboratory advised on February 11, 1997 that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5892 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

U.S. Geological Survey, Denver, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–127. Applicant: U. S. Geological Survey, Denver, CO 80225. Instrument: SIR Mass Spectrometer with Automated Sample Peripherals, Model Optima. Manufacturer: Micromass, United Kingdom. Intended Use: See notice at 62 FR 2133, January 15, 1997. Reasons: The foreign instrument provides: (1) An absolute sensitivity of 1 mass 44 ion per 1000 molecules of CO_2 and (2) an external precision of 0.02 for 10 bar µl of CO_2.

Docket Number: 96–130. Applicant: State University of New York, Stony Brook, NY 11794. Instrument: Mass Spectrometer, Model Delta^{plus}.

Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 62 FR 2133, January 15, 1997. Reasons: The foreign instrument provides: (1) Analytical performance of 0.006% for ^{13}C and 0.012 for ^{18}O (both as CO_2) and (2) analysis of samples to 50 bar µl to the above precision.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5891 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Massachusetts Medical Center; Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 am and 5 pm in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 96–101. Applicant: University of Massachusetts Medical Center, Worcester, MA 01605. Instrument: Spectrophotometer System, Model SF–61 DX2/X. Manufacturer: Hi-Tech Scientific, United Kingdom. Date of Denial without Prejudice to Resubmission: December 12, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–5893 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Illinois at Urbana-Champaign, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Numbers: 96–075, 96–076R and 96–077. Applicant: University of Illinois at Urbana-Champaign, Urbana, IL 61801. Instrument: Eye Tracking System, Model EYELINK. Manufacturer: SR Research Ltd., Canada. Intended Use: See notice at 61 FR 41774, August 12, 1996. Reasons: The foreign instruments provide a sampling rate of 250 Hz and spatial resolution of eye position to 0.005 degree without requiring use of head restraint. Advice received from: National Institutes of Health, December 17, 1996 and January 30, 1997.

Docket Number: 96–123. Applicant: William Marsh Rice University, Houston, TX 77005. Instrument: Stopped-Flow Fluorescence Spectrophotometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: See notice at 62 FR 979, January 7, 1997. Reasons: The foreign instrument provides: (1) An instrumental ''deadtime'' of 1.2 msec permitting measurement of reaction rates up to 1500 sec^{-1} and (2) sequential mixing capability. Advice received from: National Institutes of Health, December 16, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–6040 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 960508126–6126–01]

RIN 0625–AA46

Allocation of Duty-Exemptions for Calendar Year 1997 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates 1997 duty-exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465 (''the Act'').

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the regulations (15 CFR part 303), this action establishes the total quantity of duty-free insular watches and watch movements for 1997 at 4,600,000 units and divides this amount among the three insular possessions of the United States and the Northern Mariana Islands. Of this amount, 3,100,000 units may be allocated to Virgin Islands producers, 500,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (61 FR 55883).

The criteria for the calculation of the 1997 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with Section 303.5 of the regulations.

In calendar year 1996 the Virgin Islands watch assembly firms shipped 1,015,199 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1996 plus the creditable wages paid by the industry during calendar year 1996 to

residents of the territory totalled $3,623,965.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 1997 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA–334P) as a result of the Departments' verification.

The duty-exemption allocations for calendar year 1997 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	200,000
Progress Watch Co., Inc.	500,000
Unitime Industries, Inc.	500,000
Tropex, Inc.	400,000

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Danny Aranza,

Acting Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 97–5894 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DS–P, 4310–93–P

DEPARTMENT OF COMMERCE

[Docket No. 960322092–7041–05; I.D. 122696A]

RIN 0648–ZA19

Gulf of Mexico Sustainable Fisheries Program

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

ACTION: Final notice of availability of Federal assistance.

SUMMARY: NMFS establishes a Gulf of Mexico Sustainable Fisheries Program that provides $10 million in fishery disaster assistance to the Gulf of Mexico (Gulf). NMFS will allocate the $10 million to the five Gulf states' fisheries resource agencies for projects or other measures designed to alleviate the long-term effects of the fishery resource disasters on the Gulf's fishery resources and associated habitat.

FOR FURTHER INFORMATION CONTACT: Buck Sutter, at (813) 570–5324.

SUPPLEMENTARY INFORMATION:

Background.

Pursuant to his authority under section 308(d) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)) (IFA), the Secretary of Commerce (Secretary) declared fishery resource disasters on August 2, 1995, in the Pacific Northwest, New England, and the Gulf. With respect to the Gulf, the Secretary's disaster declaration (Declaration) cited multiple impacts. Nonpoint source nutrients and debris entering the Gulf as a result of the Mississippi River floods in 1993 and 1994 caused severe hypoxia, a condition where the excess nutrients react to deplete the water of necessary oxygen, which spread to massive areas in the Gulf and threatened marine life and coastal resources. The flood debris created underwater hazards for commercial fishermen who suffered damaged or lost gear and vessels. In addition, the Secretary cited hurricanes that harmed fisheries habitat and engendered substantial economic damage and social disruption. Because of these impacts, the Secretary made $15 million available for the Gulf of Mexico for disaster relief.

On June 10, 1996, NMFS published a final notice (61 FR 29350) describing the Gulf of Mexico Fisheries Disaster Program (FDP), which committed up to $5 million of the available $15 million for direct grants to commercial fishermen who suffered uninsured fishing vessel or gear damage or loss caused by the hurricanes, floods, or their aftereffects. Subsequently, on October 24, 1996, a notice was published (61 FR 55132) to expand eligibility under the FDP.

Section 308(d) of the IFA allows the Secretary to help persons engaged in commercial fisheries by providing assistance indirectly through state and local government agencies. Therefore, the remaining $10 million in Gulf disaster assistance will go toward projects or other measures to alleviate the long-term impacts on Gulf fishery resources and associated habitat from conditions cited in the August 2, 1995, Declaration. Because the impacts varied from state to state, this assistance is provided through the five Gulf state fisheries resource agencies, as they are in the best position to determine how the funds can be used.

This notice establishes the criteria that will be used by NOAA to evaluate and fund state disaster assistance proposals. NOAA has been in consultation with the eligible state fishery resource agencies, and plans to invite proposals via letter. At that time, applicants will be provided additional details on applicable Federal assistance requirements. Once NMFS determines that a state's proposal(s) complies with all applicable terms, limitations, and conditions, NMFS will enter into a financial assistance agreement with that state for the administration of each project.

After consultations with appropriate state officials and review of available information regarding the impacts of disasters that occurred from August 23, 1992, through December 31, 1995, NMFS has decided upon the following apportionment of funds: Alabama—$1 million; Florida—$2.25 million; Louisiana—$4.5 million; Mississippi—$1 million; and Texas—$1.25 million.

On behalf of the Secretary, NMFS published a Notice of Proposed Program on January 2, 1997 (62 FR 94), to solicit public comments. One written comment was received, from a Gulf state fishery resource agency. The comment expressed support for the proposed program, stating that the criteria established in the notice will allow states to design and implement projects that will benefit fishery resources and habitats in the long term. NMFS agrees and has therefore made no changes to the program.

Criteria

In order to be considered for funding, a state proposal must adhere to the following criteria:

1. The proposed project(s) must be consistent with the original intent of the Secretary's disaster declaration and the IFA (i.e., each project must address conditions resulting from nutrients and debris entering the Gulf as a result of floods, and/or hurricanes or hurricane-strength storms, from August 23, 1992 through December 31, 1995); and

2. Projects must address the long-term benefit of the fishery resource and associated habitat and must seek to create healthy, sustainable fisheries in the Gulf of Mexico; and

3. Projects must not duplicate existing Federal, state, or local projects. However, they may augment or allow the maintenance of effort of existing projects, provided that those projects are consistent with all other criteria. In other words, separate projects may not be created if such projects already exist, but funds may be used to maintain existing projects; and

4. Projects that primarily involve new data collection must show a clear relationship between that project and long-term benefits to the fishery resource that are attainable without additional funding. A new data collection project would not qualify under this program if the project would not provide sufficient useful information without future funding.

Projects that would qualify under these criteria might include restoration/development of hurricane or flood-

damaged habitat, enhancement of stocks that declined due to hypoxia or habitat loss, or fishing capacity reduction projects to alleviate the excess capacity targeting the depleted stocks and to mitigate the financial harm suffered by fishermen who targeted these stocks.

Determinations and Administration

All state grant proposals will be reviewed by the Department of Commerce, NOAA, and NMFS. Final project selections will be made by NMFS ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations. If a proposal is accepted, NOAA will enter into a financial assistance agreement with the submitting state.

NMFS may require states to submit semiannual project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each 6-month period. These reports would be submitted to the individual specified as the NMFS Program Officer in the funding agreement. NMFS may also require states to submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report would describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project.

NMFS is committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, recipients may be required to submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS Home Page.

Catalogue of Federal Domestic Assistance

The Program is listed in the ''Catalogue of Federal Domestic Assistance'' under No. 11.452, Unallied Industry Projects.

Classification

This program has been determined to be not significant for the purposes of E.O. 12866. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this notice would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, no regulatory flexibility analysis was prepared. Because there are less than 10 applicants, the Paperwork Reduction Act does not apply.

Authority: Public Law 99–659 (16 U.S.C. 4101 *et seq.*); Public Law 102–396; Public Law 104–134.

Dated: March 5, 1997.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5951 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

[I.D. 030597A]

Endangered Species; Permits

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

ACTION: Receipt of applications for two scientific research permits (P45X, P45Y) and modification 2 to scientific research permit 956 (P45S).

SUMMARY: Notice is hereby given that the Columbia River Research Laboratory of the U.S. Geological Service in Cook, WA (USGS), formerly the National Biological Service, has applied in due form for two permits and a modification to a permit authorizing takes of endangered and threatened species for scientific research purposes.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before April 10, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Environmental and Technical Services Division, Portland.

SUPPLEMENTARY INFORMATION: USGS requests two permits and a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

USGS (P45X) requests a five-year permit for annual takes of adult and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to determine the post-release attributes and survival of hatchery and natural fall chinook salmon in the Snake River. The study consists of eight assessment tasks for which ESA-listed fish are proposed to be taken: 1) Life cycle, 2) redd counts, 3) food and growth, 4) habitat use, 5) predation, 6) temperature response, 7) migratory behavior, and 8) race and residualism. ESA-listed fish will be observed; captured, handled, and released; captured, anesthetized, tagged with passive integrated transponders or radio transmitters, allowed to recover from the anesthetic, and released; or taken lethally. Indirect mortalities associated with the research activities are also requested.

USGS (P45Y) requests a three-year permit for an annual take of juvenile, threatened, artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to determine the vertical and horizontal distribution of juvenile salmonids exposed to high levels of total dissolved gas during their seaward migration in the Snake and Columbia Rivers. The vertical and horizontal distribution of juvenile salmonids exposed to high levels of total dissolved gas must be further defined to assess the risk of mortality from gas bubble disease. ESA-listed fish will be acquired from the Smolt Monitoring Program under the authority of permit 822 at Lower Monumental, Ice Harbor, or McNary Dams; transported as necessary to Ice Harbor Dam; anesthetized; surgically implanted with radio transmitters; allowed to recover from the anesthetic and the surgical procedure; released at Ice Harbor Dam; and tracked electronically between Ice Harbor and McNary Dams. Indirect mortalities of ESA-listed fish associated with the research activities are also requested.

USGS (P45S) requests modification 2 to scientific research permit 956 for authorization to take juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with annual research activities. Permit 956 currently authorizes USGS an annual take of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to obtain data on the distribution, abundance, movement, and habitat preferences of the

anadromous fish that migrate through Lower Granite Reservoir; to evaluate the operation of a surface bypass collector in the forebay of Lower Granite Dam; and to verify species of hydroacoustic surveys. Juvenile, ESA-listed fall chinook salmon are proposed to be acquired from the Smolt Monitoring Program under the authority of permit 822, collected by purse seine, or collected from the juvenile bypass facility at Lower Granite Dam; transported as necessary to Lower Granite Dam; anesthetized; surgically implanted with radio transmitters; allowed to recover from the anesthetic and the surgical procedure; released at Lower Granite Dam; and tracked electronically. Indirect mortalities of ESA-listed fish associated with the research activities are also requested. Modification 2 would be valid for the duration of the permit. Permit 956 expires on September 30, 1999.

Those individuals requesting a hearing on either of the two requests for a permit or the permit modification request should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: March 5, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5978 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030497F]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 1031 (P623)

SUMMARY: Notice is hereby given that D. Ann Pabst, Ph.D., University of North Carolina at Wilmington, 601 South College Road, Wilmington, North Carolina 28403–3297, is hereby authorized to take cetaceans for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Regional Administrator, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

SUPPLEMENTARY INFORMATION: On November 25, 1996, notice was published in the Federal Register (61 FR 59863) that the above-named applicant had submitted a request for a scientific research permit to harass during photo-identification studies, acoustic recording, and aerial and vessel surveys, up to 1,200 humpback whales (*Megaptera novaeangliae*) annually over a five year period. In addition, the following non-target species may be harassed during the course of the research: North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), Atlantic bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), beaked whales (*Mesplodon sp.*), and pelagic dolphins (*Stenella sp.*). The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222). Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 5, 1997.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5976 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

March 5, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being reduced for carryforward applied to 1996 limits.

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 68245, published on December 27, 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

March 5, 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 December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on March 11, 1997, you are directed to reduce the limits the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
331/631	2,092,588 dozen pairs.
360	4,391,160 numbers.
363	40,083,642 numbers.
369–S [2]	625,920 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–6011 Filed 3–10–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, March 31, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6185 Filed 3–7–97; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, March 24, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6186 Filed 3–7–97; 11:03 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 3:30 p.m., Tuesday, March 18, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcements Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6187 Filed 3–7–97; 11:03 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, March 17, 1997.

PLACE: 1155 21st St., NW., Washington, DC 9 Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6188 Filed 3–7–97; 11:03 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, March 10, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–6189 Filed 3–7–97; 11:03 am]

BILLING CODE 6351–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 97–1]

Safe Storage of Uranium-233

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the Safe Storage of Uranium-233. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before April 10, 1997.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 208–6400.

Dated: March 6, 1997.

John T. Conway,

Chairman.

[Recommendation 97–1] Safe Storage of Uranium-233

Dated: March 3, 1997.

Approximately one ton of Uranium-233 (^{233}U), a man-made isotope of uranium, was produced by the Department of Energy (DOE) and its predecessor agencies. This material has been studied extensively, and uses were found for it in DOE's defense-related applications and in nuclear reactor programs supported both by DOE and commercial companies. The ^{233}U in this country is now all in the possession of DOE. It is presently stored at several DOE sites, predominantly within defense nuclear facilities under the purview of the Defense Nuclear Facilities Safety Board (Board). Almost all of the ^{233}U has been determined by DOE to be excess to its needs, and with minor exceptions it is regarded as legacy material. As will be apparent from the following, however, any future

processing or disposal of the ^{233}U will be accompanied by deep problems which will cause handling of the relatively small inventory of this material to be exceptionally difficult.

Most of this material in DOE storage has a specific alpha-activity which approaches that of weapons grade plutonium. Furthermore, all ^{233}U contains an amount of ^{232}U which varies from one lot to another. One of the daughter products in the radioactive decay chain of the ^{232}U is Thallium-208 (^{208}Th). That isotope of Thallium emits a high-energy (2.6 Mev) gamma ray when it decays. Depending on the amount of ^{232}U present in the ^{233}U, the surrounding radiation field can vary from somewhat less than one Rem/hr to several tens of Rem/hr. This radiation field causes handling and processing of any single item to be highly hazardous and very difficult to perform. Even visual inspection of a container housing ^{233}U will usually be difficult.

DOE has recently completed a review of issues associated with highly-enriched uranium. The results of that review have been made available to the Board in a report entitled the Highly Enriched Uranium Environmental, Safety and Health Vulnerability Assessment Report. This report stated that ^{233}U in storage exists in various forms throughout the complex, including metal, compounds, and scrap material. In addition, it noted that there was uncertainty as to the identity of some of the items and the material condition of many of the storage containers. Members of the Board's staff have also recently reviewed the storage of ^{233}U. The results of that review have been issued by the Board as the report ''Uranium-233 Storage Safety at Department of Energy Facilities'' (DNFSB/TECH–13). The assessments in that report have led the Board to identify several areas of concern.

Responsibility for the ^{233}U inventory remaining within the DOE complex is diffuse. Several secretarial officers and office heads are responsible for aspects of defense nuclear facilities that store significant quantities of ^{233}U. For example, Defense Programs is responsible for Building 3019 at the Oak Ridge National Laboratory, where more than 400 kg of ^{233}U resides. Environmental Management now has responsibility for the Chemical Processing Plant and the Radioactive Waste Management Complex at the Idaho National Engineering Laboratory, where there are about 350 kg of unirradiated ^{233}U in various chemical and physical forms and a large number of irradiated nuclear fuel elements. An additional complication results from the role of DOE's Office of Material Disposition in developing strategies for final disposal of excess special nuclear material. By way of contrast to this state of dispersed responsibility, the Board notes the better practice of placing stabilization of plutonium residues under a single project manager, in response to the Board's Recommendation 94–1.

Uncertainty as to the condition of many items of stored ^{233}U generates additional concerns. Review of the original storage and packaging of the items of ^{233}U reveals wide variations in practices. Questions exist in some cases as to the original state and composition of stored items. Furthermore, many of the containers in which U-233 is stored have not been inspected for decades, and in some cases have not even been accessed over this interval. The inactivity leads to additional doubts as to the condition of the stored material, and degrades even further the information base which should be improved before it becomes necessary to process the contents of the containers for ultimate disposal. It also raises questions as to how the storage facilities themselves can be deactivated, cleaned up, and decommissioned, since some will be contaminated with this highly radioactive material.

It cannot be ruled out that problems exceeding those which motivated the Board in issuance of its Recommendation 94–1 may be found where ^{233}U is stored under conditions such that physical deterioration can occur. For this reason it would appear prudent to assess the adequacy of packaging of the items of ^{233}U as they are presently stored, as well as the state of the storage facilities, and to correct any problems that are found. The assessment would profit from the example of DOE's implementation of the Board's Recommendation 94–1, in developing a standard for the interim packaging and storage of plutonium. A similar standard would probably be appropriate for ^{233}U, but some differences may be called for.

The Board understands that work is presently on-going within DOE to address some of the above concerns. However, actions to deal with DOE's remaining inventory of U-233 would be greatly enhanced by a more systematic and focused approach. Therefore, the Board recommends that DOE:

1. Establish a single line project to deal with issues attached to safe storage of ^{233}U.

2. Develop standards to be used for packaging, transportation, and interim and long-term storage of ^{233}U.

3. Characterize the items of ^{233}U presently in storage in DOE's defense nuclear facilities, as to material, quantity, and type and condition of storage container.

4. Evaluate the conditions and appropriateness of the vaults and other storage systems used for the ^{233}U at DOE's defense nuclear facilities.

5. Assess the state of storage of the items of ^{233}U in light of the standards mentioned in recommendation 2 above.

6. Initiate a program to remedy any observed shortfalls in ability to maintain the items of ^{233}U in acceptable interim storage.

7. Establish a plan for the measures that can eventually be used to place the ^{233}U in safe, permanent storage.

8. Until these ultimate measures are taken, ensure that the DOE complex retains the residue of technical knowledge and competence needed to carry through all of the measures needed to ensure safe storage of the ^{233}U in the short and the long term.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to Acting Secretary of Energy

Defense Nuclear Facilities Safety Board

March 3, 1997.

The Honorable Charles B. Curtis,
Acting Secretary of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1000

Dear Mr. Curtis: On March 3, 1997, the Defense Nuclear Facilities Safety Board (Board), in accordance with 42 U.S.C. § 2286a(a)(5), unanimously approved Recommendation 97–1 which is enclosed for your consideration. Recommendation 97–1 deals with the Safe Storage of Uranium-233.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by the Department of Energy under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway

Chairman

Enclosure: c: Mr. Mark B. Whitaker, Jr.

[FR Doc. 97–5961 Filed 3–10–97; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

Dates and Times: Tuesday, March 25, 1997, 8:00 am—4:00 pm.

Place: The Madison Hotel, Dolley Madison Ballroom, 15th and M Streets, NW, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force: The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

8:00–8:15 Opening Remarks & Objectives; Philip Sharp, Chairman, Electric System Reliability Task Force;
8:15–9:15 Discussion: Assumptions Regarding the Future Electricity Industry
9:15–10:15 Discussion: Basic Concepts and Operating Requirements for Electric System Reliability
10:15–10:30 Break
10:30–11:45 Panel Discussion & Roundtable: Policy and Institutional Issues, Panelists: NERC, Power Marketer, & DOE
11:45–12:00 Public Comment
12:00–1:15 Lunch
1:15–3:45 Panel Discussion & Roundtable: Policy and Institutional Issues (Continued), Panelists: NERC, Power Marketer, & DOE
3:45–4:00 Scheduling of Next Meeting
4:00 Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to David Cheney, Acting Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes: The minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on March 5, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–5995 Filed 3–10–97; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed changes and extension to Form NWPA–830R A–G, ''Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste.''

DATE: Written comments must be submitted on or before May 12, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESS: Send comments to Kathy Gibbard, Energy Information Administration Survey Manager, EI–531, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (phone number (202) 426–1129; e-mail address KGIBBARD@EIA.DOE.GOV, and FAX number (202)426–1280).

FOR FURTHER INFORMATION: Requests for additional information or copies of the form and instructions should be directed to Kathy Gibbard at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

The Form NWPA–830R A–G is designed to be as the service document for entries into the Department of Energy's accounting records. Electric utilities transmit data concerning payment of their contribution to the

Nuclear Waste Fund, and specific data on disposal of nuclear waste.

II. Current Actions

In keeping with its mandated responsibilities, EIA proposes to extend the information collection aspects of NWPA–830R A–G, ''Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste,'' for three years from the current approved OMB expiration date (05/31/97).

The proposed changes to the Form NWPA–830C, Appendix C—Delivery Commitment Schedule, are summarized below:

Changes to Appendix C Form

(1) Section 3.0 Certifications—The referenced Item 1.3 in the certification statement was replaced with Item 1.4.

(2) ''Unites States'' was replaced with ''United States'' to correct a typographical error.

Changes to Appendix C Instructions

(1) 4. Where to Submit—The address was changed to conform with the new DOE address for forms submission: Special Accounts Team, Office of Financial Control and Reporting, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

(2) Questions on the DCS—

The contact name was changed from Nancy Slater to Dave Zabransky.

Changes to Appendix G Form

(1) The Zip Code 20875 was replaced with 20874–1290.

(2) Section 2, Line 2.7—''Fee Date'' was replaced with ''Fee Data''.

Changes to Appendix G General Information

(1) 3. Where to Submit—The forwarding address for remittance advice (RA) submittals was changed to conform with the new DOE address for submission of forms.

(2) 4. When to Submit—

The last sentence of this section: ''Payment is by electronic wire transfer only.''

Was replaced with the following: ''Payment is by electronic wire transfer or automated clearing house (ACH) electronic funds transfer only.''

Changes to Appendix G Instructions

(1) Section 2.4—

''Ten-Year Treasury Note rate on the date the payment is made, to be used if payments are being made using the 40 quarter option or if lump sum payment is made after June 30, 1985.''

was replaced with:

''Ten-Year Treasury Note rate in effect on the date of the first payment. To be used only if payments are being made using the 40 quarter option (Option 1).''

Changes to Annex A Form

(1) Section 2. Net Electricity Generated Calculation—Previously asterisked footnotes will be enumerated and modified as follows:

([1]) For a nuclear station with more than one reactor and different ownerships for each reactor, a separate Annex A will be required for each reactor.

([2]) Utilities unable to meter individual units' use shall report estimated unit use and shall explain in a footnote how the unit data were estimated.

(2) The following footnote was added:

([3]) Complete this item only if the DOE has approved a methodology for calculating such offsets.

Changes to Annex A Instructions

(1) 0.5 Where to submit—The address was changed to conform with the new DOE address for forms submission.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in Item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency? Does the information have practical utility. Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date specified in the instructions?

C. Public reporting burden for this collection is estimated to average 40 hours per respondent on Form NWPA–830G and Annex A; and 5 hours of reporting burden on Form NWPA–830C. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) total dollar amount annualized for capital and start-up costs and (2) recurring annual costs of operating and maintaining and purchasing service costs associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. March 5, 1997.

Jay H. Casselberry,

Agency Clearance Officer Office, of Statistical Standards, Energy Information Administration.

[FR Doc. 97–5994 Filed 3–10–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–267–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective March 1, 1997:

Twentieth Revised Sheet No. 8
Twenty-second Revised Sheet No. 9
Twenty-first Revised Sheet No. 13
Twenty-second Revised Sheet No. 16
Twenty-fifth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved mechanism of its Tariff to implement recovery of $2.5 million of above-market costs that are associated

with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $8.3 million to $2.5 million, based upon lower costs incurred from November 1996 through January 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5928 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–260–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that, on February 28, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, proposed to become effective March 1, 1997:

Twenty-sixth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed to implement the annual reconciliation of the recovery of its Above-Market Dakota Costs, as required by its tariff recovery mechanism. ANR advises that the filing proposes a negative reservation surcharge adjustment of ($0.072) applicable to its currently effective, firm service Rate Schedules. This negative surcharge is proposed to return to ANR's customers, over the twelve month period of March 1, 1997 to February 28, 1998, the $2.5 million of Above-Market Dakota Cost overcollections, inclusive of interest, which are reflected in the filing, along with $1.3 million, inclusive of interest, of refunds associated with Dakota above-market costs applicable to the first two quarterly Dakota filings, which were recently reduced as a result of the Commission's final order in Opinion No. 410 approving ANR's Settlement Agreement with Dakota.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commissions Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5949 Filed 3–10–97; 8:45 am]

BILLING CODE 6717––M

[Docket No. TM97–2–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below, with an effective date of April 1, 1997.

Settlement Rates

Fifth Revised Sheet No. 44

Collection Rates

First Revised Sheet No. 44A

In accordance with the Commission's order issued January 29, 1997 in Docket No. RP95–408, et al. (78 FERC ¶ 61,071), the Settlement Rates implement the lower settlement rates pending Commission action on the November 22, 1996, settlement in Docket No. RP95–408, et al., and the Collection Rates are applicable to customers' not wanting to be subject to surcharge conditions associated with paying the Settlement Rates.

The proposed changes constitute Columbia's annual filing pursuant to the provisions of Section 35, ''Retainage Adjustment Mechanism'', of the General Terms and Conditions (GTC) of its tariff. Third Revised Sheet No. 44 sets forth the retainage factors applicable to Columbia's transportation, storage, processing and gathering services.

Columbia states that copies of this filing have been served upon all of its firm customers, and interested State Commissions. Moreover, all interruptible customers having submitted a standing request for such filings were also served.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5931 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below, with an effective date of April 1, 1997:

Settlement Rates

Eighteenth Revised Sheet No. 25
Eighteenth Revised Sheet No. 26
Eighteenth Revised Sheet No. 27

Nineteenth Revised Sheet No. 28
Eleventh Revised Sheet No. 30
Seventh Revised Sheet No. 31

Collection Rates

Second Revised Sheet No. 25A
Second Revised Sheet No. 26A
Second Revised Sheet No. 27A
Second Revised Sheet No. 28A
Second Revised Sheet No. 30.1
Third Revised Sheet No. 31A

In accordance with the Commission's order issued January 29, 1997 in Docket No. RP95–408, et al. (78 FERC ¶61,071), the Settlement Rates implement the lower settlement rates pending Commission action on the November 22, 1996 settlement in Docket No. RP95–408, et al., and the Collection Rates are applicable to customers' not wanting to be subject to surcharge conditions associated with paying the Settlement Rates.

The derivation of the proposed rates for the EPCA Rates is shown on Appendix A, attached to the filing, and is to recover $4,754,633 million in annual costs for electric power and to flow-back a $1,074,885 over-recovery in electric power costs applicable to the EPCA surcharge.

Columbia states that these revised tariff sheets are filed pursuant to Section 45, Electric Power Costs Adjustment (EPCA), of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. Columbia states that Section 45.2 provides that Columbia may file, to be effective each April 1, to adjust its electric power costs, thereby allowing for the recovery of current EPCA costs and the EPCA surcharge.

Columbia states that these revised tariff sheets are being filed to reflect adjustments to Columbia's current costs for electric power for the twelve month period beginning April 1, 1997.

Columbia states that copies of this filing have been served upon all of its firm customers, and interested State Commissions. Moreover, all interruptible customer were also served.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5933 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–140–005 and RP97–262–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective April 1, 1997.

Original Sheet No. 99K
Original Sheet No. 99L

Pursuant to the prior agreements of the parties following Columbia's first filing to recover Accrued-But-Not-Paid Gas Costs, , this filing should be sub-docketed the RP96–140 docket number.

Columbia states that the instant filing is being submitted pursuant to Article VII, Section C, Accrued-But-Not-Paid Gas Costs, of the ''Customer Settlement'' in Docket No. GP94–02, et al., approved by the Commission on June 15, 1995 (71 FERC ¶ 61,337 (1995)). The Customer Settlement became effective on November 28, 1995, when the Bankruptcy Court's November 1, 1995 order approving Columbia's Plan of Reorganization became final. Under the terms of Article VII, Section C, Columbia is entitled to recover amounts for Accrued-But-Not-Paid Gas Costs. As directed by Article VII, Section C, the tariff sheets contained herein are being filed in accordance with Section 39 of the General Terms and Conditions of the Tariff, to direct bill the Accrued-But-Not-Paid Gas Costs that have been paid subsequent to November 28, 1995.

Columbia states that the instant filing reflects Accrued-But-Not-Paid Gas Costs in the amount of $3,081,647.31 plus applicable FERC interest of $43,996.23. This is Columbia's fifth filing pursuant to Article VII, Section C, and Columbia's reserves the right to make the appropriate additional filings pursuant to that provision. The allocation factors on Appendix F of the Customer Settlement were used as prescribed by Article VII, Section C.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions. Columbia also agrees to make available for this filing the data that it was required to provide in its June 13, 1996 compliance filing in Docket No. RP96–140–002 pursuant to a protective agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5942 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–261–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below, with an effective date of April 1, 1997:

Settlement Rates

Seventeenth Revised Sheet No. 25
Seventeenth Revised Sheet No. 26
Seventeenth Revised Sheet No. 27
Eighteenth Revised Sheet No. 28
Tenth Revised Sheet No. 29
Tenth Revised Sheet No. 30

Collection Rates

First Revised Sheet No. 25A
First Revised Sheet No. 26A
First Revised Sheet No. 27A
First Revised Sheet No. 28A
First Revised Sheet No. 29A
First Revised Sheet No. 30.1

General Terms and Conditions

Fifth Revised Sheet No. 452
Fifth Revised Sheet No. 453

In accordance with the Commission's order issued January 29, 1997, in Docket No. RP95–408, et al. (78 FERC ¶ 61,071), the Settlement Rates implement the lower settlement rates pending Commission action on the November 22,

1996 settlement in Docket No. RP95–408, et al. and the Collection Rates are applicable to customers not wanting to be subject to the surcharge conditions associated with the Settlement Rate.

This filing comprises Columbia's annual filing pursuant to Section 36.2 of the General Terms and Conditions (GTC) of its Tariff. GTC Section 36, ''Transportation Costs Rate Adjustment (TCRA)'', enables Columbia to adjust its TCRA rates prospectively to reflect estimated current costs and unrecovered amounts for the deferral period. The TCRA rates consist of a current TCRA rate, reflecting an estimate of costs for a prospective 12-month period beginning April 1, 1997, and a TCRA surcharge rate which is a true-up for actual activity within the deferral period of the 12-months ended December 31, 1996.

Columbia is also revising GTC Section 36 to eliminate references to costs which are no longer applicable to the TCRA mechanism effective April 1, 1997.

The TCRA rates set forth on Appendix A, Sheet 1, attached to the filing, include projected costs, in the amount of $16,072,586, for the Operational Account No. 858 contracts. This level of costs is based upon the rates of the applicable pipeline companies at April 1, 1997, and the respective determinants associated with these contracts.

The TCRA surcharge calculations reconcile actual activity for the deferral period, which is comprised of calendar year 1996. The TCRA Surcharge Rates set forth on Appendix B Schedule 1, attached to the filing, reflect a net under-recovery of $1,221,822.

Columbia proposes to collect on an as-billed basis an under-recovery of $756,992 in demand costs and $464,830 in commodity costs applicable to its Operational Account No. 186 deferral period of January 1, 1996 through December 31, 1996.

The demand determinants reflected in the filing are those projected to be in effect at April 1, 1997. Throughput levels for Rates Schedules FTS, SST, OPT, GTS and ITS are from Columbia's Settlement filed on November 22, 1996 in Docket No. RP95–408.

Columbia states that copies of this filing have been served upon all of its firm customers, and interested State Commissions. Moreover, all interruptible customers having submitted a standing request for such filings were also served.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5948 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1997:

1st Rev Fourteenth Revised Sheet No. 018
1st Rev Fifteenth Revised Sheet No. 019

Columbia Gulf states that this filing represents Columbia Gulf's annual filing pursuant to Section 33, ''Transportation Retainage Adjustment (TRA)'', of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Columbia Gulf states that it currently has retainage factors for each of its three zones. Each factor consists of a current and an unrecovered component for company-use, lost, and unaccounted for quantities. In this filing, Columbia Gulf is adjusting the current component of each retainage factor to reflect a change in the estimate for company-use, lost, and unaccounted for quantities.

The deferral period for this filing is the twelve-month period of January 1, 1996, through December 31, 1996. Columbia Gulf states that Appendix A to the filing sets forth Columbia Gulf's actual experience during the deferral period. As reflected therein, Columbia Gulf was in a net under-recovery position as of December 31, 1996. Consequently, in this filing Columbia Gulf is implementing an unrecovered surcharge component for each of the retainage factors to increase future quantities to be retained.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5932 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–256–000]

K N Wattenberg Transmission Limited Liability Company; Notice of Request Under Blanket Authorization

March 5, 1997.

Take notice that on February 20, 1997, K N Wattenberg Transmission Limited Liability Company (K N Wattenberg), P.O. Box 281304, Lakewood, CO 80228, filed in Docket No. CP97–256–000, a request pursuant to Sections 157.205, 157.208 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208 and 157.211). K N Wattenberg requests authorization to install a new delivery lateral along with receipt point facilities and two delivery points in Morgan County, CO to provide transportation service for two end user shippers, under K N Wattenberg's blanket certificate issued in Docket No. CP92–203–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, K N Wattenberg proposes to install approximately 4 miles of 6-inch pipe, 1 mile of 4-inch pipe, interconnect facilities at the upstream end of the proposed lateral with the existing pipeline facilities of Colorado Interstate Gas Company in Morgan County, CO, and measurement and control facilities at two delivery points. K N Wattenberg states that these proposed facilities would provide

transportation service to Leprino Foods Company and Excel Corporation for use in their facilities at Fort Morgan, CO.

K N Wattenberg also states that the estimated cost of the proposed facilities is approximately $725,000. K N Wattenberg further states that K N Energy, Inc., K N Wattenberg's parent company, would finance the project out of funds on hand or by a loan or an equity investment, or a combination of the two.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedureal Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5936 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–263–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of April 1, 1997:

Twenty-Third Revised Sheet No. 5
Twenty-Third Revised Sheet No. 6
Twentieth Revised Sheet No. 7

MRT states that the purpose of this filing is to remove the Gas Supply Realignment Costs (GSRC) included in MRT's GSRC Reservation Surcharges and that portion of the GSRC included in the volumetric rates charged to MRT's ITS customers. MRT collects such GSRC pursuant to Section 16.3 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, and the Base Stipulation and Agreement approved by the Federal Energy Regulatory Commission in Docket Nos. RP93–4, RP94–68, and RP94–190.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5950 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–67–005]

Mojave Pipeline Company; Notice of Report

March 5, 1997.

Take notice that on February 28, 1997, in compliance with the Federal Energy Regulatory Commission's order issued May 17, 1996 at Docket No. RP96–67–000, Mojave Pipeline Company (Mojave) tendered for filing a Hub Services Report for the first year of Hub operations.

Mojave states that the Hub Services Report details its Hub services for the previous year provided under Rate Schedule APS–1. Mojave provided no authorized loan services under Rate Schedule ALS–1 during this period.

Mojave states that copies of the filing were served upon all parties of record in this proceeding as well as all customers of Mojave and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5941 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–610–000]

Murphy Oil USA; Notice of Issuance of Order

March 6, 1997.

Murphy Oil USA (Murphy Oil) submitted for filing a rate schedule under which Murphy Oil will engage in wholesale electric power and energy transactions as a marketer. Murphy Oil also requested waiver of various Commission regulations. In particular, Murphy Oil requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Murphy Oil.

On February 27, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Murphy Oil 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 385.214).

Absent a request for hearing within this period, Murphy Oil is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Murphy Oil's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing to intervene or protests, as set forth above, is March 31, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5990 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–266–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

March 5, 1997.

Take notice that on February 28, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-First Revised Sheet No. 5, with a proposed effective date of April 1, 1997.

National states that this filing reflects the quarterly adjustment to the reservation component of the EFT rate pursuant to the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

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, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 or 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5927 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–268–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858—Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Thirty-Third Revised Sheet Nos. 50, 51 and 53 to be effective April 1, 1997.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5929 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–17–003]

Northern Natural Gas Company; Notice of Compliance Filing

March 5, 1997.

Take notice that on February 28, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets proposed to become effective on April 1, 1997:

Fifth Revised Volume No. 1

First Revised Sheet No. 202
Second Revised Sheet No. 203
First Revised Sheet No. 204
First Revised Sheet No. 205
First Revised Sheet No. 212
First Revised Sheet No. 215
First Revised Sheet No. 216
1 Revised First Revised Sheet No. 257
Second Revised Sheet No. 258
1 Revised First Revised Sheet No. 259
1 Revised First Revised Sheet No. 260
Original Sheet No. 260A
Third Revised Sheet No. 265
First Revised Sheet No. 268
First Revised Sheet No. 270
Third Revised Sheet No. 286
Fourth Revised Sheet No. 287
Original Sheet No. 287A
Second Revised Sheet No. 288
Second Revised Sheet No. 289

Northern states that the instant filing is to (i) make effective changes to the General Terms and Conditions of Northern's tariff which are necessary to implement Gas Industry Standards Board (GISB) standards which have been previously approved by the Commission on a pro forma basis in Northern's compliance proceeding in Docket Nos. RP97–17–000 et al., filed on October 1, 1996 and December 16, 1996, (ii) incorporate the requirements of Order No. 587–B, issued January 30, 1997 in Docket No. RM96–1–003, and (iii) include references to the GISB definitions, datasets and standards not previously incorporated by Northern, all as required by the February 18 Order.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., 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 in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5945 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–96–367–003]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice than on February 28, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective March 1, 1997:

Third Revised volume No. 1

Substitute Ninth Revised Sheet No. 5
Substitute Seventh Revised Sheet No. 5–A
Substitute Fourth Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 7
Substitute Eighth Revised Sheet No. 8

Substitute Third Revised Sheet No. 8.1
Substitute Fourth Revised Sheet No. 200
Second Revised Sheet No. 273–A

Original volume No. 2

Substitute Twenty-Second Revised Sheet No. 2
Substitute Eighteenth Revised Sheet No. 2.1
Substitute Twenty-First Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to move into effect on March 1, 1997, Northwest's Docket No. RP96–367–000 rates that were originally filed with the Commission on August 30, 1996, as a part of a general rate increase. With the exception of adjustments related to Northwest's non-deductible business expenses and ad-valorem tax expenses that were required by the Commission, these rates are the same as those filed on August 30, 1996.

Northwest states that a copy of this filing has been served upon Northwest's customers, upon all intervenors in Docket No. RP96–367 and upon interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5943 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–367–004]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective March 1, 1997:

Third Revised Volume No. 1

2nd Sub Ninth Revised Sheet No. 5
2nd Sub Seventh Revised Sheet No. 5–A
2nd Sub Fourth Revised Sheet No. 6
2nd Sub Fourth Revised Sheet No. 7
2nd Sub Eighth Revised Sheet No. 8
2nd Sub Third Revised Sheet No. 8.1

Original Volume No. 2

2nd Sub Twenty-Second Revised Sheet No. 2
2nd Sub Eighteenth Revised Sheet No. 2.1
2nd Sub Twenty-First Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to place into effect an interim rate reduction of $18,528,273 during the pendency of settlement discussions of the general rate proceeding in this docket. The rate reduction is being made in conjunction with the filing of Northwest's Motion Rates in this docket. As a part of the Settlement, Northwest is classifying $410,273 annually to the commodity charge component of its transportation rates for the interim period.

Northwest states that it is also eliminating SFV mitigation for a terminated transportation contract with LFC Gas Company. The effect of the interim rate reduction and cost classification and billing determinant adjustment is a slight increase to the commodity charges and substantial decrease in the reservation charges for Northwest's transportation rates. The instant filing reflects the changes that result from the interim reduction in the overall cost of service underlying Northwest's transportation rates as set forth above. In the event settlement discussions break down, Northwest requests the right to terminate the interim rate reduction on thirty days notice and place into effect its Motion Rates. Northwest requests permission to withdraw this filing should approval of the automatic reinstatement of the Motion Rates not be approved. Northwest requests that the Motion Rates shall remain the filed rates in the hearing in this proceeding.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP96–367 as well as all interested customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5944 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–206–002]

Pacific Gas Transmission Company; Notice of Report of Linepack Sales

March 5, 1997.

Take notice that on February 28, 1997, Pacific Gas Transmission Company (PGT), filed its Annual Report of Linepack Sales, pursuant to Office of Pipeline Regulation Letter Order of March 31, 1995 and Section 284.288 of the Commission's Regulations.

PGT states the purpose of this filing is to report on linepack sales made during calendar year 1996, in compliance with the above-referenced order and FERC regulations. PGT further states that a copy of this report has been served upon all jurisdictional customers, interested state regulatory agencies, and all parties on the service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before March 12, 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. 97–5940 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1397–000]

South Jersey Energy Company; Notice of Issuance of Order

March 6, 1977.

South Jersey Energy Company (South Jersey) submitted for filing a rate schedule under which South Jersey will engage in wholesale electric power and energy transactions as a marketer. South Jersey also requested waiver of various Commission regulations. In particular, South Jersey requested that the

Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by South Jersey.

On February 28, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by South Jersey 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 385.214).

Absent a request for hearing within this period, South Jersey is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of South Jersey's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 31, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5991 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–271–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

March 5, 1997.

Take notice that on February 27, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP97–271–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point for service to Kimberly-Clark Corporation (Kimberly-Clark) under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Kimberly-Clark at approximately Mile Post 493.384 on Southern's South Main Lines in Aiken County, South Carolina. The estimated cost of the construction and installation of the facilities is approximately $262,350. Kimberly-Clark will reimburse Southern for the cost of constructing and installing the proposed facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5938 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–259–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

March 5, 1997.

Take notice that on February 28, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 1997.

Tariff Sheets Applicable to Contesting Parties

Twenty-Second Revised Sheet No. 14
Forty-Fourth Revised Sheet No. 15
Twenty-Second Revised Sheet No. 16
Forty-Fourth Revised Sheet No. 17
Twenty-Fifth Revised Sheet No. 18
Twenty-Ninth Revised Sheet No. 29

Tariff Sheets Applicable to Supporting Parties

Eleventh Revised Sheet No. 14a
Eighteenth Revised Sheet No. 15a
Eleventh Revised Sheet No. 16a
Eighteenth Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under unrealigned gas supply contracts as well as sales function costs during the period November 1, 1996 through January 31, 1997. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5947 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–270–000]

Texas Eastern Transmission Corporation, Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets with a proposed effective date of April 1, 1997:

Fourth Revised Sheet No. 145
Fourth Revised Sheet No. 146
Fourth Revised Sheet Nos. 147–155

Texas Eastern states that the filing is submitted pursuant to Section 15.2(G),

Transition Cost Tracker, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission promulgated thereunder.

Texas Eastern states that the purpose of the filing is to continue its recovery of Order No. 636 transition costs incurred by upstream pipelines and flowed through to Texas Eastern as approved by the Commission by order dated March 19, 1996 in Docket No. RP96–156–000, Texas Eastern's last filing to recover upstream transition cost. Texas Eastern states that this filing covers approximately $2.1 million of upstream transition costs for the period January 1, 1996 through December 31, 1996, which is a reduction of approximately 34% from the last filing.

Texas Eastern states that copies of the filing were served on all firm customers of Texas Eastern and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5930 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT97–5–000]

Texas Gas Transmission Corporation, Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, with an effective date of April 1, 1997:

Third Revised Sheet No. 234

Texas Gas states that the proposed tariff sheet is being filed to reflect changes in Section 36 ''List of Shared Operating Personnel and Facilities'' of the General Terms and Conditions regarding limited office space being shared with TXG Gas Marketing, a marketing affiliate.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5939 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–54–002]

Trailblazer Pipeline Company, Notice of Compliance Filing

March 5, 1997.

Take notice that on February 28, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

Trailblazer states that the purpose of the filing is to: (1) reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission' (Commission) Regulations by Order Nos. 587 and 587–B; and (2) comply with the Commission's Order issued December 26, 1996, in Docket No. RP97–54–000.

Trailblazer states that copies of the filing are being mailed to its jurisdictional customers, all parties set out on the official service list at Docket No. RP97–54–000, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5946 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–8–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective April 1, 1997.

Transco states that the instant filing is submitted pursuant to Section 41 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. Transco states that Attached in Appendix B are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

Transco also states that the TEP rates are designed to recover Transco's transmission electric power costs for its electric compressor stations (Stations 100, 120, 145, and 205). The costs underlying the revised TEP rates consist of two components—the Estimated TEP Costs for the period April 1, 1997 through March 31, 1998 plus the balance in the TEP Deferred Account including accumulated interest as of January 31, 1997. Appendix C contains schedules detailing the Estimated TEP Costs for the period April 1, 1997 through March 31, 1998 and Appendix D contains workpapers supporting the

calculation of the TEP Deferred Account.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions, and other interested parties.

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, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 97–5934 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–9–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff enumerated in Appendix A attached to the filing.

Transco states that the instant filing is submitted pursuant to Section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file, to be effective each April 1, a redetermination of its fuel retention percentages applicable to transportation and storage rate schedules. The derivations of the revised fuel retention percentages included herein are based on Transco's estimate of gas required for operations (GRO) for the forthcoming annual period April 1997 through March 1998 plus the balance accumulated in the Deferred GRO Account at January 31, 1997.

Transco states that an alternate tariff sheet has also been tendered for filing which reflects a change in the method used to derive the fuel retention factor applicable to Section 7(c) firm transportation service provided by Transco under Rate Schedule FT–NT. The proposed method would effect the sole remaining Rate Schedule FT–NT shipper (New York Power Authority) in that they would be assessed the system transmission fuel retention percentage in zone 6 rather than an incrementally determined fuel percentage.

Included in Appendices B and B–1 attached to the filing are the workpapers supporting the derivation of the revised fuel retention factors.

Transco states that copies of the filing have been served upon its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5935 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–266–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

March 5, 1997.

Take notice that on February 25, 1997, Williams Natural Gas Company (WNG), One Williams Center, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–266–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to relocate the Western Resources, Inc. (WRI) Capron, Oklahoma and Kiowa, Kansas town borders from the Pampa 20-inch pipeline to an adjacent 4-inch pipeline and then to abandon the delivery of gas from the Pampa 20-inch pipeline, located in Alfalfa County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to deliver gas from the new 4-inch pipeline to the Kiowa town border, located in Barber County, Kansas and the Capron town border, located in Woods County, Oklahoma and then to abandon the delivery of gas from the 20-inch pipeline, located in Alfalfa County, Oklahoma.

WNG states that the volumes delivered from the new 4-inch pipeline will be the same as those currently delivered from the 20-inch pipeline. WNG asserts that most recent peak day and annual deliveries for the Kiowa town border are 18 Dth and 2,286 Dth, respectively, and for the Capron town border are 688 Dth and 85,834 Dth, respectively. WNG declares the total volume to be delivered under the authorization requested herein will not exceed the total volume authorized, since no change in volume is anticipated.

WNG states there will be no change to facilities or location for either the Kiowa or Capron town borders, simply service from a different pipeline, with the total project cost estimated to be $56,552.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5937 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–265–000]

Wyoming Interstate Company Ltd.; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1997.

Take notice that on February 28, 1997, Wyoming Interstate Company Ltd. (WIC), tendered for filing to become part of its FERC gas tariff, First Revised

Volume No. 1, and Second Revised Volume No. 2 the tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

WIC states on November 1, 1996 it filed in Docket No. RP97–62–000 pro forma tariff sheets to comply with Order No. 587. As part of WIC's filing its proposed revisions to its Volume No. 1 tariff to comply with Order No. 587 standards. However, in the Commission's order on WIC's compliance filing (Compliance Order) issued January 16, 1997, the Commission stated WIC must remove all proposed pro forma tariff changes to its Volume No. 1 tariff as this tariff is only for service under Part 157 of the Commission's regulations. The Compliance Order stated WIC could file these proposed changes separately as a limited section 4 filing. The Compliance Order further stated WIC's proposed new Headstation Pooling Rate Schedule in Volume No. 2 goes beyond the scope of Order No. 587 and should also be addressed in a limited section 4 filing. WIC states this is the purpose of this filing.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and area available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5926 Filed 3–10–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of February 10 Through February 14, 1997

During the week of February 10 through February 14, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: March 3, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Decision List No. 20 Week of February 10 through February 14, 1997

Request for Exception

Nugent Motor Company, 2/11/97, VEE–0033

Nugent Motor Company (Nugent) filed an Application for Exception requesting relief from the requirement that it file the Energy Information Administration form entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report'' (Form EIA–782B). The DOE found that even though one clerk worked overtime to complete the form, the filing requirement did not constitute a special hardship, inequity or unfair distribution of burdens. Therefore, the Application was denied.

Refund Application

Gulf Oil Corp./Bounds Oil Company, 2/14/97, RF300–289

A refund of $2,221 including interest is awarded in the Gulf Oil Corporation (Gulf) special refund proceeding to the heir of a partner of Bounds Oil Company (BOC), a business that purchased Gulf products. The application was previously denied due to inadequate documentation of the partnership and the heir's ownership interest. Here, the applicant substantiated that he was the sole heir of a partner who owned fifty percent of BOC. The applicant was therefore granted a refund equal to fifty percent of BOC's allocable share of the Gulf refund, plus applicable interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

BENJAMIN SPENO JOINT VENTURE	RK272–03988	2/13/97
BENJAMIN SPENO JOINT VENTURE	RK272–03989	.....
GOODLAND COOP. EQUIP. EXCH. ET AL	RF272–76698	2/11/97
HOUSTON/PASADENA/APACHE OIL CO/TESORO PETROLEUM CORP	RF357–00001	2/13/97
IRA KELLMAN ET AL	RK272–03006	2/11/97
LAMPE BLOCK CO. ET AL	RK272–03492	2/13/97
NORMAN STORLIE	RJ272–38	2/14/97

Dismissals

The following submissions were dismissed.

Name	Case No.
CONRAD COOP	RG272–00034
FARMERS COOPERATIVE ELEVATOR CO.	RG272–0342
LOVELACE GAS SERVICE, INC.	VCX–0008

[FR Doc. 97–5993 Filed 3–10–97; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Final Power Allocations of the Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final power allocations.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, hereby announces its Post-2000 Resource Pool Power Allocations to fulfill the requirements of Subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR Part 905. The Post-2000 Resource Pool Allocations are Western's implementation of Subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule for the Pick-Sloan Missouri Basin Program, Eastern Division. Western's proposed allocations were initially published in the Federal Register August 30, 1996, and a clarification and response to comments was published in the Federal Register December 3, 1996. The formal comment period on the proposed allocations ended on January 6, 1997, and a discussion of comments received pertaining to the proposed allocations is included in this notice. After consideration of all of the comments, Western has decided to finalize the proposed allocations to new utility and nonutility customers as announced on August 30, 1996, and to finalize the proposed allocations to Native American tribes based on the levelized methodology adjusted to address the relatively small indirect benefits provided to the Rosebud Sioux Tribe by Rosebud Electric Cooperative.

DATES: The Post 2000 Resource Pool Final Power Allocations, as based on the Pick-Sloan Missouri Basin Program—Eastern Division marketable resource at this time, will become effective April 10, 1997, and will remain in effect until December 31, 2020. Electric service contracts for the sale of power allocated in this notice will be effective when signed by both the customer and Western. Allottees will have six months to execute a contract with Western after the initial offer of a draft contract, unless otherwise agreed in writing by Western. Contracts entered into under the Post-2000 Resource Pool Allocation Procedures shall provide for Western to furnish the benefits of firm electric service effective from January 1, 2001, through December 31, 2020.

ADDRESSES: Information regarding the Post-2000 Resource Pool Allocations, including comments, letters, and other supporting documents made or kept by Western for the purpose of developing the final allocations, are available for public inspection and copying at the Upper Great Plains Customer Service Regional Office, Western Area Power Administration, located at 2900 4th Avenue North, Billings, Montana 59101.

SUPPLEMENTARY INFORMATION: Western published a notice of proposed allocations in the Federal Register on August 30, 1996, at 61 FR 45957 to implement Subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. Western's final procedures were published in the Federal Register at 61 FR 41142 on August 7, 1996. Those procedures, in conjunction with the Pick-Sloan Missouri Basin Program—Eastern Division, Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860, corrected at 45 FR 77509) established the framework for allocating power from the resource pool established for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED).

Western held public information and comment forums on September 18, 19, and 20, 1996, to accept oral and written comments on the proposed allocations. On October 8, 1996, Western published in the Federal Register, at 61 FR 52788, a Notice of Time Extension for the Proposed Allocation which extended the formal comment period for written comments from October 7 to October 21, 1996. On December 3, 1996, Western published in the Federal Register, at 61 FR 64080, a Notice of Clarification, Response to Comments and Request for Additional Comments regarding the levelized method of calculating proposed allocations for new Native American customers and proposed an alternative method. Western held a public information and comment forum on December 17, 1996, to accept oral and written comments regarding the methodology used to calculate the proposed allocations for new Native American customers. The comment period for this Federal Register notice ended January 6, 1997.

The August 30, 1996, Federal Register notice proposed a levelized methodology for determining Native American allocations (Method One). Under Method One Western levelized total Federal hydropower benefits to be received by each tribe. The proposed allocations under Method One (the direct benefit to each tribe) were determined by taking the total Federal hydropower benefit (63.323 percent in the summer and 56.869 percent in the winter) to be received by each tribe less the amount of indirect benefit each tribe receives through its current power supplier(s). As a result of comments received during the comment period for 61 FR 45957, Western published an alternative second method (Method Two) in the Federal Register on December 3, 1996, to calculate the proposed tribal allocations (direct benefit). Under Method Two the tribal allocations were determined by prorating the total amount of the resource pool available to the tribes based on each tribe's estimated load. This Federal Register notice also republished Method One and requested comments in support of one of the two methods.

Western has decided to finalize the proposed allocations to new utility and nonutility customers as announced August 30, 1996, and to finalize the proposed allocations to Native American tribes based on Method One adjusted to address the relatively small indirect benefits provided to the Rosebud Sioux Tribe by Rosebud Electric Cooperative. Final allocations were determined in the same manner as Method One except the portion of indirect benefits received by the Rosebud Sioux Tribe from the Rosebud Electric Cooperative were taken out of the calculation of Rosebud Sioux Tribe's indirect benefits. This was done in response to several comments that the Rosebud Electric Cooperative supplies an insignificant portion of the Rosebud Sioux Tribe's electrical requirements. Under Method One, as adjusted, Western levelized total Federal hydropower benefits received by each tribe. The proposed allocations under adjusted Method One (the direct benefit to each tribe) were determined by taking the total Federal hydropower benefit (61.6065 percent in the summer and 55.3396 percent in the winter) to be

received by each tribe less the amount of indirect benefit each tribe receives through its current power supplier(s).

The Post-2000 Resource Pool Allocations set forth in this Federal Register notice identify the utility and nonutility customers and Native American tribes to which Western intends to allocate power to implement Subpart C of the Power Marketing Initiative of the Energy Planning and Management Program Final Rule in the P–SMBP–ED.

Response to Customer Comments Regarding Post-2000 Resource Pool Allocations

I. General Comments

Comment: Western received requests for extension of the comment period for the August 30, 1996, Federal Register notice.

Response: 61 FR 52788 published October 8, 1996, extended the deadline for submittal of comments until October 21, 1996. Also, 61 FR 64080 published December 3, 1996, clarified, responded to comments, and requested additional comments regarding the levelized method of calculating proposed allocations for new Native American customers and proposed an alternative method. Comments were accepted regarding this notice until January 6, 1997.

Comment: Western received requests to reconsider the application of Horsecreek Irrigation Cooperative. Horsecreek Irrigation Cooperative does not directly or indirectly receive electrical power from McKenzie Electric Cooperative, Inc. Horsecreek Irrigation Cooperative was formed solely for the purpose of obtaining Western power and does not yet receive any power whatsoever from McKenzie Electric Cooperative, Inc. Horsecreek Irrigation Cooperative is not active and will not be active unless and until Western power is available.

Response: Because Horsecreek Irrigation Cooperative is inactive, Western has declared them ineligible based on the Post-2000 Resource Pool Allocation Procedures General Eligibility Criteria sections III.A, III.E and III.I.

Comment: Western inappropriately evaluated Horsecreek Irrigation Cooperatives's meeting of the 100 kW eligibility criteria. The use of the eligibility criteria that the allocations be based on loads experienced in the 1994 summer season and the 1994–95 winter season does not reflect the actual growing seasons, is misguided, and favors other users over agricultural users, who were the primary users for which Pick-Sloan power was intended to benefit.

Response: The Post-1985 Marketing Plan established the criterion of a minimum allocation to determine eligibility for power allocations. The Post-1985 Marketing Plan minimum allocation criteria was modified as set forth in the Final Procedures. The final allocations of power for new utility and nonutility customers were calculated using Post-1985 Marketing Plan criteria. Under the Post-1985 Marketing Plan criteria, the summer allocations are 24.84413 percent of total summer load and the winter allocations are 35.98853 percent of total winter load. The final allocation procedures as published at 61 FR 41142 stipulated these percentages would be applied to the 1994 summer and 1994–95 winter season loads for utility and nonutility customers. Based on information Horsecreek Irrigation Cooperative supplied in their Applicant Profile Data and our calculation of that data, Western again determined Horsecreek Irrigation Cooperative ineligible under the General Eligibility Criteria sections III.A, III.E and III.I.

Comment: The contract with Western for the existing allocation is contracted with the utility. Tribes choosing to form a separate utility cannot access the allocation already contracted. There is a need for discussion of this subject for an equitable resolution. In absence of a resolution, Western is making it extremely difficult for tribes to form utilities and in some cases, beneficial to the effected utilities that currently provide service.

Response: The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes. Western does not believe these allocations have created additional burdens for Native American tribes in forming a separate utility. Those tribes with smaller allocations under either method may find it more costly to form a separate utility simply because of the cost associated with supplemental power due to the loss of their indirect benefits.

Comment: Several applicants requested that their applications be given reconsideration. Applicants stated that their rates were not adjusted when the allotment was received by the supplier for power and therefore have not received benefits, directly or indirectly, of Western power.

Response: Western reviewed all applications that were requested to be reconsidered. That review did not find previous applicants declared ineligible to be eligible. Whether or not rates were adjusted for any applicant currently receiving benefit, directly or indirectly, from a current P-SMBP-ED firm power allocation is outside of the scope of this process.

Comment: One commenter stated that Minot State University's application was not considered because they are currently receiving benefits directly or indirectly and requested an explanation.

Response: Our General Eligibility Criteria in the Post-2000 Resource Pool Allocation Procedures states, ''Qualified utility and nonutility applicants must not be currently receiving benefits, directly or indirectly, from a current P-SMBP-ED firm power allocation. Qualified Native American applicants are not subject to this requirement.'' We have determined that if an entity such as Minot State University is administered by a State which is receiving benefits, then they are also receiving the benefits of Federal power and are therefore, ineligible.

Comment: Western received several comments questioning whether Western will review the application and change their decision if a city/municipality should achieve utility status by the deadline stated in the Federal Register.

Response: It was the responsibility of the city/municipality to provide necessary documentation for Western to determine if the city/municipality met the General Eligibility Criteria. Based upon the information submitted during the application period in their applicant profile data, Western has determined that those entities would not be able to achieve utility status in the given time frame.

Comment: If Western should decide to make additional allocations available in the years 2006 and 2011, a Federal Register notice should be published two years in advance to allow interested cities a chance to obtain utility status. Another commenter requested Western provide applicants ample opportunity prior to the years 2006 and 2011 to develop their own electrical utility.

Response: If additional allocations are made, they shall be made in accordance with the Program. Specifically, 10 CFR 905.35(c) requires entities that desire to purchase power from Western for resale to consumers obtain utility status 3 years prior to the subsequent resource pool. Notice of these requirements were published in a final rule November 20, 1995. The implementation of the Program does not prevent an entity from obtaining utility status at any given time. These allocations and procedures do not in any way affect Western's obligations or flexibility in regards to future resource pools as stipulated in the Program.

Comment: Any allocations of power to the tribes need to recognize and

acknowledge that tribes were denied access to power in all previous allocations. Another questioned how individual tribal member land owners whose land is in trust, as is the tribes, would be able to benefit from the Western allocation program, if the initial motivation for including tribes in the Western allocation process was due to impacts to Indian lands as a result of hydroelectric development on the Missouri. Two commenters stated they would like to remind Western that allocations of power in no way abrogates any outstanding treaty obligations owed to their tribe nor does it impact the tribe's water rights but is merely the result of tribes achieving ''Preference Power Customer'' status. Another commented that the fair share of the total resource pool allocated to the tribes was determined by Western to reflect a portion of the reservation electrical needs by the year 2000 and to reflect the fact that the tribes had been denied access to Western power in previous allocations.

Response: Western has continued to take steps towards assisting Native Americans in meeting their needs for cost-based hydropower. Western has always considered tribes to be preference entities, but has not historically allocated power to Native Americans in the absence of utility status, eligible irrigation load, or special legislation enacted by Congress. In the past, the benefits of hydropower have been realized by Native Americans through allocations to cooperatives that serve tribal load. The Program changed Western's policy regarding Native Americans and utility status. Therefore, allocations will now be made directly to the tribes. Western agrees that these allocations do not impact tribal water rights or treaty obligations.

Comment: Western received several comments that Western did not follow the Final Power Allocation Procedures of the Post-2000 Resource Pool as published in the Federal Register on August 7, 1996. Specifically, the August 7, 1996, Final Procedures, Section III, Paragraph I states, ''The minimum allocation shall be 100 kilowatts (kW).'' The Flandreau Santee Sioux Tribe had a proposed winter season allocation of only 20 kW under Method One. This allocation is lower than the minimum allocation in the Final Power Allocation Procedures .

Response: The Final Procedures incorporate the Post-1985 Marketing Plan criterion of a minimum allocation in establishing these allocations. The Post-1985 Marketing Plan established the criterion that eligibility for power allocations was based on an annual basis and not a seasonal basis. It was never the intent of the Post-1985 Marketing Plan or the Post-2000 allocation process to infer that all seasonal allocations would be a minimum of 100 kW. An applicant meets this criterion as long as one season's proposed allocation meets the minimum allocation of 100 kW. Therefore, in this case, it is possible to receive a winter allocation under the 100 kW minimum as long as the summer season is 100 kW or larger. It should be noted that Western disqualified several utility and nonutility applicants on the basis that both their winter and summer season proposed allocations would be below the 100 kW minimum.

Comment: One commenter expressed concern that Western decided to allocate the remainder to the tribes and actually increase the tribes'' share of the resource pool from 75 percent to about 80 percent. They asked that Western look at the rules that were established and see if a greater percentage of people could benefit from low cost hydropower by changing some of the rules. Also, they stated that a small part of the 25 percent of the resource pool originally designated for the new utility and nonutility customers was transferred to the Native American customers. Again they requested Western review this procedure with regard to allocating that small part to either new customers who have not yet formed a ''public power agency'' or to entities that are preference customers.

Response: Western was obligated to apply the Post-2000 Resource Pool Allocation Procedures to all applicants. This process is designed to allocate the 4 percent as set forth by the Program. Two future 1 percent resource pools were also identified as part of the Program and allocations from these future resource pools will be dealt with in future public processes.

Comment: If the ''preference power'' method of calculations is used, the tribes should be compensated $10,000 each and Mni Sose $100,000 to cover the entire cost for their 3-year effort.

Response: This comment is outside of this process. Western does not have authority to compensate an entity for efforts in this process.

Comment: The Federal government, Department of Energy, Bureau of Reclamation, Army Corps of Engineers, Department of Interior, the Bureau of Indian Affairs, and Western, should collaborate to assure that tribes be allowed to develop and operate their own power utilities. Language should be amended to give tribes the ability to form utilities as opposed to keeping the oppressive policies ongoing.

Response: The implementation of the Program does not prevent an entity from obtaining utility status.

Comment: One commenter protested the allocations process and demanded compensation for the use of water river rights for the Oglalas, other Sioux tribes, and Missouri River tribes.

Response: This comment is outside of this process. Western does not have authority to compensate an entity for the use of water rights.

Comment: Three commenters requested Western recalculate the proposed allocations for the Native American tribes using only the criteria in the final allocation procedures (the estimated loads).

Response: Western used the Post-2000 Resource Pool Allocation Procedures criteria including the estimated loads in the tribal applications in determining the final allocations for qualified Native American tribes.

Comment: Allocations were arranged in such a way as to discourage a tribe from starting its own utility because the amount allocated was so small.

Response: Allocations were based on the 4 percent resource pool which was derived from the Program. Western's final procedures were published in the Federal Register at 61 FR 41142. Those procedures, in conjunction with the Post-1985 Marketing Plan, established the framework for allocating power from the resource pool, are final, and cannot be changed in this process.

Comment: Western needs to increase the size of the resource pool. One option would be to revamp current facilities to increase generation and reserve surplus for tribes. Another commented that by offering up a resource pool which is woefully inadequate to address the needs of the tribes Western has forced the tribes to fight with each other. Another commented that the tribes now have to place the interest of their own tribes in the forefront and decide which of the two alternatives is best for their tribe. This may lead to possible dissension among the tribes which may be the goal Western is attempting to achieve. Additionally, two commenters stated that the fair share determined by Western does not reflect the argument made by the tribes that the size of the resource pool and the tribal allocation should have been substantially greater.

Response: The 4 percent resource pool was derived from the Program, and therefore the size of the pool is outside this process. This process is designed to allocate the 4 percent resource pool as set forth by the Program. It was the intent of Western to provide benefits

from the resource pool to all eligible entities. Two future 1 percent resource pools were also identified as part of the Program and allocations from these future resource pools will be dealt with in future public processes.

Comment: Outside purchases are needed to supplement the proposed Post-2000 allocation and accommodate a larger allocation to the tribes. Such purchases would not be a detriment to any existing customer of Western. Pick-Sloan purchases are relatively small in contrast to other Western areas.

Response: This comment is outside of this public process. The Final Allocation Procedures and Final Allocations are a direct result of the Program. The Program does not provide for the acquisition of additional outside resources to supplement the 4 percent resource pool.

Comment: Using the power suppliers' existing hydro allocations to provide allocations to tribes implies that the tribes may have rights to part of the power suppliers current allocation. Another commented that using the power suppliers' existing hydro allocation to provide allocations to the tribes implies that the Flandreau Santee Sioux may have rights to part of the City of Flandreau's current allocation. This is a major concern to the City of Flandreau since the tribe was not receiving any power when the City of Flandreau received their allocation in 1977.

Response: The intent of the Program was to provide benefits of Federal hydropower allocations directly to qualified Native American tribes. This is represented in the final allocations. The use of existing hydro allocations in the calculation method does not imply that the tribes have rights to any part of these allocations. Further, it does not change the contractual commitments between Western and the existing customers. Contractual commitments between Western and the existing customers are outside of this public process.

Comments: The proposed allocations for the Native American tribes are based on their estimated population, both on and off the reservations, with the Ponca Tribe of Nebraska having no land base. The commenter believes the allocations should be based on the estimated electrical load on the reservations. The proposed allocation from the estimated loads based on population projections, result in allocations larger than some tribes can utilize. Two commenters stated that the proposed allocations from the estimated loads result in allocations larger than some tribes can currently utilize. Another commented that allocations are more favorable to tribes without service from an existing Western customer and less favorable to tribes with service from an existing Western customer. Another commented that the amount of the Crow Tribe allocation derived from Method Two, plus the tribe's power supplier's existing allocation, may be larger than the entire load of the Crow Tribe. Finally, one commented that Method Two would provide the Crow Creek Tribe more than 100 percent of their load.

Response: Western does not agree with these comments and our analysis does not support this conclusion. Allocations for Native American tribes were based on estimated loads for the year 2000. In the absence of reliable load data for Native American tribes, population data was used in an effort to estimate Native Americans loads in the year 2000. In this notice, Western has levelized the total Federal hydropower benefits (61.6065 percent in the summer and 55.3396 percent in the winter) to be received by each tribe.

Comment: It should be clearly defined in the contracts that the allocations go to the tribes themselves or beneficiaries of the tribes.

Response: Contracts for the Post-2000 Resource Pool allocations will be between Western and the allottee.

Comment: One commenter asked if the original low cost power issued to the tribes will still be low cost after all the transmission costs are considered. Another commented that there should be no transmission costs associated with distribution of power to tribes in the Missouri River Basin.

Response: Western will assist the allottee in obtaining third-party transmission arrangements for delivery of firm power. To the extent that utilities are involved in these arrangements, Western will work with those entities. However, as stated in the Final Procedures, it is the ultimate responsibility of the allottee to obtain its own delivery arrangements and to pay the associated costs.

Comment: Western should have allowed tribal input in developing the allocation process.

Response: Tribal input, as well as input from other entities, has been solicited in conjunction with the public process comment period that was initiated January 29, 1996, and concluded January 6, 1997. During that time frame seven informational forums and seven comment forums were held and ongoing opportunities to provide written comments were allowed at each step of the process.

Comment: Two comments stated that the tribes should directly receive the entire allocation to service the tribal load.

Response: The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes. The entire allocations contained in this notice will be made directly to the tribes. Any indirect benefits recognized in the calculation method were utilized only to levelize total benefits across the Region at the time of allocation with no intent to create any commitment whatsoever, to transfer these benefits to the tribes. Any indirect benefits received by the tribes are contractual commitments between Western and the existing customers and are outside of this public process.

Comment: The allocation as proposed (under Method One) penalizes the Crow Tribe as a recipient of Federal power and subjects the Crow Tribe to anti-Indian policies by an existing power supplier.

Response: It is not the intent of the Program to penalize any recipient of Federal power. Under any method of direct allocation, which does not result in full requirements being met by P–SMBP–ED, the tribe will be subject to existing power supplier policies to the extent they desire the existing power supplier to continue to supply the tribe's remaining power needs.

Comment: Revenues from Western could be more helpful to tribes by providing set-aside monies, grants, and startup monies. This is the prime time for a tribe to initially plan for utility status, if it wants to.

Response: This comment is outside of this process. Western does not have the authority to provide revenues to the tribes for set-aside monies, grants or startup monies through this allocation process.

Comment: Was the motivation for the provisions in the 1992 Energy Policy Act to include Indian tribes in Western's allocation planning? Did tribes or representatives from tribes provide testimony, initially under the Energy Policy Act to include benefit provisions to tribal governments?

Response: These comments are outside of this process.

Comment: Did tribes use the negative impacts to Indian lands from hydroelectric development on the Missouri River as justification to include tribes as beneficiaries of Western allocations?

Response: This comment is outside of this process.

Comment: If Western would refer the individual land owner back to the tribe, would Western be predisposed to assist and advocate for individual land owners, directly impacted by

hydroelectric development activities, in respect to energy allocations, either through low or no cost energy benefits after the year 2001?

Response: Western intends to provide benefits directly to Native American tribes beginning in 2001 and will work with the tribes to assure receipt of those benefits.

Comment: There is not a clear enough definition as to who a qualified allocation beneficiary can be outside of a reservation boundary.

Response: Off-reservation use of Native American tribe allocations under certain circumstances as determined by Western was allowed for in 60 FR 54151. The circumstances under which off-reservation use of a Native American tribe allocation will be allowed will be determined by Western on a case-by-case basis during the contract negotiation process.

Comment: The allocation should be made to the tribe and to the utility.

Response: The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes. This principal is consistent with how Western treats existing customers. Western does not feel that the goal of the Program would be served by jointly allocating Native American allocations to utilities and tribes.

Comment: The very concept of the allocation/credit has caused concern among the cooperative membership and an increase to a nonjustifiable higher level will enhance divisiveness and ill feelings.

Response: This situation does exist among some of Western's long term firm power customers who have a different blend of low-cost hydropower and supplemental power. This comment is outside of this process.

Comment: As new preference customers, Native Americans should receive the benefit of the same principles Western has applied in previous marketing plans.

Response: Western's final procedures were published in the Federal Register at 61 FR 41142. Those procedures, in conjunction with the Post-1985 Marketing Plan, established the framework for allocating power from the resource pool. The current process has incorporated principles from prior marketing plans as well as establishing that the new customers will be bound by similar general contract principles as existing customers.

Comment: To revisit the Native American allocation methodology at this late date is counterproductive to expeditious implementation of this program.

Response: This comment was directed at the December 3, 1996, Federal Register notice, which proposed an alternate second method to calculate the proposed tribal allocations. Based upon input received during the public process, Western felt it appropriate to propose an alternate Native American allocation methodology and to extend the comment period to determine power allocations to assure the intent of the Program is satisfied.

Comment: It is important that Western directly involve the Sisseton-Wahpeton Sioux Tribe, and the other Missouri River basin tribes in all future resource planning and allocations. Mni Sose Intertribal Water Rights Coalition, Inc. will also continue to be an active representative of these tribes. Also, one commenter stated that comments submitted pursuant to this notice should not be considered the final comments of their Tribe/Nation. The Crow Tribe Public Utility Commission will continue to review and report on the various aspects of Energy, Electrical Power and ancillary services. Another commented that Western, along with the rest of the Federal Government, has an enduring and continuing trust responsibility for the tribes in the Missouri River Basin.

Response: Western supports the Department of Energy's American Indian policy which stresses the need for a government-to-government, trust-based relationship. Western intends to continue its practice of consultation with tribal governments so that tribal rights and concerns are considered prior to any actions being taken that effect the tribes.

Comment: The delivery of Federal hydropower to the tribes should be made in such a way that the benefit of the allocation is realized by the end user.

Response: Contracts for power of the Post-2000 Resource Pool will be between Western and the allottee.

Comment: One commenter expressed the desire for Western to come to the Standing Rock Reservation to present the contracts in negotiating with Standing Rock Sioux Tribe to honor the government-to-government relationship, because it is taken very seriously at Standing Rock Reservation.

Response: Entering into contractual arrangements with the various entities is the next step of this process. However, this will not begin until the final allocation process has been completed.

Comment: The allocation should be made in the form of energy and not a credit.

Response: Western agrees that allocations in the form of energy is one viable method of delivering the benefits of Federal hydropower to Native American tribes. However, flexibility must be retained in the delivery of such benefits in order to fit a diverse group of Native American tribes and power suppliers. The method for delivering the benefits of Federal hydropower to the tribes will be determined during the contract negotiation process.

B. Methodology Comments

- Western departed from the Mni Sose Intertribal Water Rights Coalition, Inc. method of allocation without consultation with the tribes and created inequities.
- Western ignored the allocation formula which the tribes agreed upon and poured considerable resources into preparing.
- Two commenters mentioned the plan put forth by Mni Sose Intertribal Water Rights Coalition, Inc. must be acknowledged and used.
- The proposed allocation to the Pine Ridge Tribe is 40 percent greater than what Mni Sose Intertribal Water Rights Coalition, Inc. estimated as their current requirements.
- Current use figures were often unavailable because the five companies that currently serve the Lake Traverse Reservation were not totally cooperative in providing data.
- The allocation process is sorely lacking in consideration of the tribe's needs and wants and the Yankton Sioux Tribe is not going to indicate a preference for either allocation method.
- The differences between the proposed methods of allocation may be perceived to instigate confrontations among or between various tribes, but the ultimate concern of the Native American tribes/Nations is to improve and expand electric goods and services available to improve living conditions and address conditions on many ''Indian Reservations'' within and throughout the native life sustaining regions of the Upper Missouri River region and beyond.
- Several commented that Section 3, Paragraph D of the General Allocation Criteria, states, ''Allocations made to Native American Tribes will be based on estimated load developed by the Native American tribes. Inconsistent estimates will be adjusted by Western during the allocation process.'' Under Method One, ''Proposed Allocations'' were not only based on the estimated load developed by the Native Americans, they were adjusted by the estimated current service the Native Americans were already receiving from their power suppliers. The so called ''levelizing'' of benefits was not part of

the General Allocation Criteria in the Final Procedures. Also, under this method, the Flandreau Tribe will lose 4 percent or 53 kW in the year 2000. After 2000 the tribe will have a net loss of 33 kW.

• Several commenters expressed concern that the average current Western service to the Rosebud Sioux Reservation, as published in the Federal Register, is not correct. Ninety-nine percent of the Rosebud Sioux Tribe's load is served by LaCreek-Electric Cooperative, Inc. and Cherry-Todd Electric Cooperative, Inc., both members of Rushmore Electric Power Cooperative. The small portion of Rosebud Electric Power Cooperative's service with a higher allocation should be ignored for this calculation in order to make the balance correct in how much the tribe should get. Take Rosebud Electric Cooperative out of the formula and the allocation would be fair and correct.

• It is important to the members of Hot Springs Rural Electric Association, Inc. that the precedent set in the P–SMBP–ED be a fair and equitable allocation of the Resource Pool. In the near future, Western will begin to allocate the Resource Pool in the Pick Sloan Missouri Basin, Western Division, and we anticipate similar action in the Colorado River Storage Project.

• The amount of allocation derived from the use of Method One more clearly represents a fair allocation to the Crow Tribe.

• Several commenters strongly encourage Western to apply the levelized method (Method One) of calculating proposed allocations to Native American customers. The support is based on the principle of applying equity among tribal members. These comments suggest that Method Two is not consistent with the principle of equity. Method Two offers greater benefits to some at the expense of others. Unless existing Federal bulk power supply available through current power suppliers is taken into account as part of the final allocations, variations in the amount of Federal power available among tribal interests will vary and lead to further retail rate disparities.

To increase the allocation to Method Two levels does not make sense.

• We support ''Method One'' as fair and equitable to all Native Americans and current electric utility providers. Neither they nor its member systems serve the region defined in the Federal Register notice but think its important to comment. They anticipate similar action in the Colorado River Storage Project and it is very important to them and its member systems that the precedent set in the P–SMBP–ED be fair and equitable. Also, they submitted recommendations because expenses for the Pick-Sloan Missouri Basin Program are shared over both divisions. The alternative method does not equitably distribute the benefits of the resource pool or take into account benefits for Native Americans already received through the current electric utility.

• If Western utilizes ''Method Two'', the Turtle Mountain band of Chippewa Indians would suffer a 27 percent reduction. Tribes which are currently receiving much higher benefits, will receive the much higher allocation which will result in a greater disparity among the tribes.

• Method One is considered inequitable for the reason that tribes receiving Western power through the existing rural electrical cooperatives are more likely to fall in the category of the Crow Creek Sioux Indian Reservation and are not likely to benefit from the current contractual arrangements between the rural electrical cooperatives and Western.

• We request Western use Method Two in calculating the proposed allocations for new Native American customers. The comment suggested that Method Two not only follows the criteria in the final procedures, it also appears to treat all tribes on a more equitable and fair basis.

• Several commenters recommended Method Two for new Native American customers. The ''second'' method presented by Western more adequately addresses the tribal needs and demands for electrical energy to improve and expand allocations to meet conditions as discussed and developed during coordinated meetings among tribes and Western. Method Two also more fairly distributes the Native American tribes' share of the resource pool among the tribes. Under Method One, some tribes would receive an allocation greatly in excess of their load requirements.

• Method One simply does not do what Western states it is intended to do. It is not a fair or equitable allocation to the tribes.

Response: Western used components of the Mni Sose Water Rights Coalition's allocation method in the development of the Final Allocation Procedures and the Final Allocations. As stated in the Post-2000 Resource Pool Allocation Procedures General Eligibility Criteria section III.D, ''Allocations made to Native American tribes will be based on estimated load developed by the Native American tribes. Inconsistent estimates will be adjusted by Western during the allocation process.'' Western accepted loads submitted by the tribes which were estimated by the Mni Sose Intertribal Water Rights Coalition, Inc. Western also accepted loads estimated using other methods developed by individual tribes. Western only adjusted tribal load estimates when an obvious error was made in the load calculation or when an unreasonable assumption was used in the estimation method.

Western provided an additional opportunity to address and clarify comments regarding the levelized method of calculating proposed allocations for new Native American customers and proposed an alternative method. On December 3, 1996, Western published in the Federal Register, at 61 FR 64080, a Notice of Clarification, Response to Comments and Request for Additional Comments. Western held a public information and comment forum on December 17, 1996, to accept oral and written comments regarding the methodology used to calculate the proposed allocations for new Native American customers. The comment period for this Federal Register notice ended January 6, 1997. The public process was a consultation period for both Native Americans and other interested entities, and the Mni Sose Intertribal Water Rights Coalition, Inc. was involved in that process.

Western recognizes the concern expressed by the Rosebud Sioux Tribe regarding the minor contribution of indirect benefits from the Rosebud Electric Cooperative in comparison to the other two co-suppliers and the inequitable effect it has on the Rosebud Sioux Tribe's proposed allocation under Method One. It was appropriate to adjust the calculation of Rosebud Sioux Tribe's indirect benefit by excluding the indirect benefits provided by Rosebud Electric Cooperative. The Rosebud Sioux Tribe and others raised this issue in both the information meetings and the formal comment forums in addition to sending in written comments. The adjustment to Method One was a data issue and not a change in the guidelines for making the allocations established through the public process. Western was not aware of this discrepancy until information was provided during the process. As a result of this information, Western has adjusted Method One as originally published to address this concern.

Western reviewed the commenter's concern that the Flandreau Tribe could possibly experience a net loss of hydropower benefits, as proposed, when considering their total power supply (supplemental power and direct benefits). All long term firm power customers of Western are subject to the

requirement that they will lose 4 percent of their allocation as provided by the Program regardless of what amount is allocated to the tribe.

We recognize the concern of the Crow Creek Sioux Tribe regarding the different rate designs of the cooperatives that serve the reservation and their effect on the ratepayers. Western has no control over these rate designs and this issue is outside of our allocation process. It should be noted that although Crow Creek Sioux Tribe's comment was directed at Method One, Method Two does not correct the rate design problem either.

Western received diverse comments regarding the proposed Method One and Method Two. The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes in an equitable manner. After reviewing all comments, Western selected Method One, adjusted to address the relatively small indirect benefits provided to the Rosebud Sioux Tribe by Rosebud Electric Cooperative, to determine the size of the allocations based upon the need to meet an appropriate share of the load for qualified Native American tribes. Western used the Post-2000 Resource Pool Allocation Procedures criteria and exercised its discretion under Reclamation Law in shaping the Final Allocations in response to input during the public process in allocating this resource to eligible applicants. Method One, as adjusted, meets Western's Program requirements and the needs of Western's new customers, while being responsive to the comments received in this process. Western did not receive comments showing an overwhelming support for a change to Method Two. In particular, Mni Sose Intertribal Water Rights Coalition, Inc., did not indicate a preference for either Method One or Method Two.

III. Final Power Allocations

The following final power allocations are made in accordance with the Final Procedures published in the Federal Register at 61 FR 41142 on August 7, 1996. All of the allocations are subject to the execution of a contract in accordance with the procedures. Western announces that Native American tribes' share of the resource pool is 80.64 percent in the summer season and 78.33 percent in the winter season. The new utility and nonutility customers' share of the resource pool is 19.36 percent in the summer season and 21.67 percent in the winter season.

Allocations to Native American Tribes

The final allocations of power for new Native American customers and the data these allocations are based upon are as follows:

New native American customers	Estimated demand kilowatts	Average current western service		Post-2000 power allocation	
		Summer	Winter	Summer kilowatts	Winter kilowatts
Blackfeet Nation	18,600	32	27	5,507	5,271
Cheyenne River Sioux	13,500	33	29	3,862	3,556
Chippewa Cree-Rocky Boy	5,000	55	44	330	567
Crow Creek	4,100	50	47	476	342
Crow	12,500	55	44	826	1,417
Devils Lake Sioux	7,700	22	14	3,050	3,183
Flandreau Santee Sioux	2,355	55	56	156	0
Fort Belknap Indian Community	6,200	28	22	2,084	2,067
Fort Peck Tribes	15,300	34	31	4,224	3,724
Lower Brule Sioux	3,100	33	29	887	817
Lower Sioux	3,750	0	0	2,310	2,075
Northern Cheyenne	9,400	36	37	2,407	1,724
Oglala Sioux-Pine Ridge	29,600	28	24	9,948	9,277
Omaha Tribe of Nebraska	5,100	15	14	2,377	2,108
Ponca Tribe of Nebraska	2,100	8	6	1,126	1,036
Rosebud Sioux	21,300	33	29	6,093	5,610
Santee Sioux Tribe of Nebraska	1,100	10	8	568	521
Sisseton-Wahpeton Sioux	7,500	40	38	1,620	1,300
Standing Rock Sioux	12,900	30	29	4,077	3,398
Three Affiliated Tribes	8,000	30	25	2,529	2,427
Turtle Mountain Chippewa	18,000	35	18	4,789	6,721
Upper Sioux	1,250	42	39	245	204
White Earth Indian Reservation	3,500	6	7	1,946	1,692
Winnebago Tribe of Nebraska	3,100	10	8	1,600	1,468
Yankton Sioux	5,300	25	24	1,940	1,661

The final allocations for new Native American customers were calculated based upon the estimated demand figures set forth in the table above. Estimated demand figures were taken from the Native American tribal applications. Inconsistent demand estimates were adjusted by Western.

In order to appropriately distribute the benefits of Federal hydropower among the tribes, Western calculated the proposed power allocations in the table above in such a manner as to levelize total Federal hydropower benefits to each of the Native American tribes. This results in a total Federal hydropower benefit of 61.6065 percent in the summer season and 55.3396 percent in the winter season to each of the tribes. To levelize the total Federal hydropower benefits, the average current percentage of Western service that each of the tribes receives through their current power supplier(s) was utilized and is as shown in the table above. For the Blackfeet Nation, Western used the weighted average of the current percentage of Western service for the remaining tribes. The Blackfeet Nation is served by Glacier Electric Cooperative, which is a total requirements customer of Bonneville Power Administration, therefore the Blackfeet Nation does not receive Western service, but does receive the benefit of Federal hydropower. The

weighted average of the current percentage of Western service changed under the adjusted Method One because Rosebud Sioux Tribe's average current percentage of Western service changed. The final power allocation for each tribe was determined by multiplying the difference between the total Federal hydropower benefit provided to each tribe (61.6065 percent in the summer season and 55.3396 percent in the winter season) and each tribe's average current percentage of Western service by each tribe's estimated demand.

The final allocations to new Native American customers set forth in the table above are based on the P–SMBP–ED marketable resource available at this time. If the P–SMBP–ED marketable resource is adjusted in the future, the final allocations will be adjusted accordingly.

B. Allocation to Utility and Nonutility Customers

The final allocations of power for new utility and nonutility customers and the loads these allocations are based upon are as follows:

Utility and Nonutility Customers	1994 Summer season load kilowatts	1994–95 Winter season load kilowatts	Post-2000 power allocation	
			Summer kilowatts	Winter kilowatts
Village of Emerson, NE	1,454	1,146	361	412
City of Estherville, IA	11,040	7,820	2,743	2,814
City of Randolph, NE	1,861	1,386	462	499
City of Pocahontas, IA	3,980	3,144	989	1,131
City of Madison, NE	10,034	8,759	2,493	3,152
City of South Sioux City, NE [1]	24,977	21,846	5,000	5,000
City of Sergeant Bluff, IA	6,076	3,888	1,510	1,399
City of Wakefield, NE	4,717	3,667	1,172	1,320
City of Fairmont, MN	2,330	2,464	579	887
City of Marathon, IA	520	764	129	275
City of Stanton, ND	656	850	163	306

[1] 5,000 kW is the maximum allocation allowed under the Final Procedures.

The final allocations of power for new utility and nonutility customers were calculated using Post-1985 Marketing Plan criteria. Under the Post-1985 Marketing Plan criteria, the summer allocations are 24.84413 percent of total summer load and the winter allocations are 35.98853 percent of total winter load.

The final allocations to new utility and nonutility customers set forth in the table above are based on the P–SMBP–ED marketable resource available at this time. If the P–SMBP–ED marketable resource is adjusted in the future, the final allocations will be adjusted accordingly.

III. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act.

IV. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

V. Review Under the National Environmental Policy Act

Western requested input regarding the identification of any additional environmental issues both in the Federal Register at 61 FR 2817, January 29, 1996, and at the public meetings. No environmental comments were received or additional environmental issues identified. Therefore, Western has determined that the analysis in the Program Environmental Impact Statement is sufficient for this action and current DOE (10 CFR part 1021) regulations indicate that no further National Environmental Policy Act impact analysis documentation is required.

VI. Determination Under Executive Order 12866

DOE has determined this action does not meet the criteria of Executive Order 12866, 58 FR 51735 and is not a significant regulatory action. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

VII. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirement: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather that a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a), sections 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more or them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

VIII. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act 1996. The Office of Management and Budget has determined that the final regulations do not constitute a ''major rule'' under the Act (5 USC 801, 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

Issued at Golden, Colorado, February 28, 1997.

J.M. Shafer,

Administrator.

[FR Doc. 97–5996 Filed 3–10–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140256; FRL–5593–5]

Access to Confidential Business Information by Hampshire Research Associates, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Hampshire Research Associates, Inc. (HRA), of Alexander, Virginia, for access to information which has been submitted to EPA under section 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 7W–0244–NASA, contractor HRA, of 1600 Cameron St., Alexandria, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in generating a report that contains data aggregates and comparisons among chemicals and chemical groups collected from the Inventory Update Reports for 1986, 1990, and 1994.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 7W–0244–NASA, HRA will require access to CBI submitted to EPA under section 8 of TSCA to perform successfully the duties specified under the contract. HRA personnel will be given access to information submitted to EPA under section 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of January 19, 1993 (58 FR 4992; FRL–4182–8), under contract number 68–D2–0064, HRA was authorized for access to CBI submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under section 8 of TSCA that EPA may provide HRA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters. Before access to TSCA CBI is authorized at HRA, EPA will approve their security certification statement.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1997.

HRA personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: March 3, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–6017 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140255; FRL–5593–4]

Access to Confidential Business Information by PRC Environmental Management, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, PRC Environmental Management, Inc. (PRC), of Chicago, Illinois, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W4–0004, contractor PRC, of 200 East Randolph Drive, Chicago, IL, will assist the Office of Waste and Chemicals Management and Regional Offices RCRA Enforcement, Permitting and Assistance Programs in the implementation of RCRA/TSCA related initiatives. Major areas of support include permitting activities, Subtitle D solid waste, corrective actions and RCRA program planning.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W4–0004, PRC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. PRC personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide PRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at PRC's sites located at 200 East Randolph Drive, Suite 4700, Chicago, IL; One Union Square 600 University St., Suite 800, Seattle, WA; 1 Dallas Center, 350 North St. Paul St., Suite 2600, Dallas, TX; and 1099 18th St., Suite 1960, Denver, Co.

PRC will be authorized access to TSCA CBI at their facilities under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at PRC's sites, EPA will approve PRC's security certification statements, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, PRC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until December 31, 1998.

PRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security

procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: March 3, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–6018 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5707–8]

Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee Meeting; Open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council will meet on Wednesday, March 26 and Thursday, March 27, 1997, in Romulus, Michigan. The meeting is open to the public. Seating will be on a first-come basis and limited time will be provided for public comment.

OPEN MEETING NOTICE: Notice is hereby given that the Envionmental Protection Agency is convening an open meeting of the Automobile Manufacturing Sector Subcommittee on Wednesday, March 26 and Thursday, March 27, 1997. The meeting will begin both days at approximately 9:30 a.m. EST and run until approximately 3:30 p.m. EST. The meeting will be held at the Crowne Plaza Hotel, 800 Merriman Road, Romulus, Michigan. The telephone number is (313) 729–2600.

The Subcommittee Meeting will focus on the review of work products produced by the project teams. The Life Cycle Project team will present several work products, including a report on the Life Cycle Simulation project. The Volatile Organic Compound (VOC)/area mini group will present its findings on the use of a VOC/area standard for coating operations. The Alternative Regulatory team will present status updates on various alternative regulatory issues, including the guiding principles for an Alternative Sector Regulatory System (ASRS), and an update on the Louisville Community Project.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2821 of EPA Headquarters, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Daria Willis at: willis.daria@epamail.gov.

FOR FURTHER INFORMATION: For more information about and vertification of this meeting, please call Alan Powell, DFO, at EPA, Region 4, by telephone on (404) 562–9045, by fax on (404) 562–9068 or by mail at 100 Alabama Street, S.W., Atlanta, Georgia 30303 or call Keith Mason, Alternate DFO, at EPA, on (202) 260–1360.

Dated: March 6, 1997.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 97–6021 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00474; FRL–5595–8]

Pesticide Program Dialogue Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act [Public Law 92–463], EPA's Office of Pesticide Programs (OPP) is giving notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC).

DATES: The meeting will be held on Tuesday, March 18, 1997 from 9 a.m. to 5:45 p.m. and Wednesday, March 19, 1997 from 9 a.m. to 12:15 p.m.

ADDRESSES: The meeting will be held at: The Ramada Plaza Hotel, 901 N. Fairfax Street, (Old Town) Alexandria, Virginia in the Washington Ballroom.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Kathleen Martin, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7090; e-mail: fehrenbach.margie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION The PPDC is composed of a balanced group of participants from the following sectors: pesticide industry and user groups; federal agencies and state governments; consumer and environmental/public interest groups, including representatives from the general public; academia; the public health community; and, congressional staff. The Committee was formed to foster communication and understanding among the parties represented on the Committee and with OPP. The Committee also provides advice and guidance to OPP regarding pesticide regulatory, policy, and implementation issues.

PPDC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any person who wishes to file a written statement can do so before or after a Committee meeting. These statements will become part of the permanent file and will be provided to the Committee members for their information. Materials will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 1128, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

Topics to be discussed at the March meeting are: the 1993 Government Performance and Results Act (GPRA) which mandates the measurement of budgeted program activities within the Federal Government; minor use pesticides and the registration of pesticides to meet emergency conditions (section 18 of the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA]); improving public communications, as well as the public brochure regarding pesticide residues in food required by the 1996 Food Quality Protection Act (FQPA).

List of Subjects

Environmental protection.

Dated: March 6, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–6206 Filed 3–10–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44638; FRL–5593–2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on n-amyl acetate (CAS No. 628–63–7). These data were submitted pursuant to a neurotoxicity testing program conducted in rats which was required under an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for n-amyl acetate were submitted by Regnet Environmental Services, Inc. on behalf of the Union Carbide Corporation pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA granted Union Carbide Corporation a 2-week extension for submission of this report and received the data on February 6, 1997. The submission includes a final report entitled ''An Acute Neurotoxicity Study of a Single Inhalation Whole-Body Exposure of n-Amyl Acetate Vapor (with a 2-week observation) in the Albino Rat.'' n-Amyl acetate is primarily used as a solvent for nitrocellulose lacquers and paints. Other large uses are as extraction solvents in penicillin manufacture and electrostatic spray coatings for automobiles. Miscellaneous uses include a solvent in photographic film, leather polishes, dry cleaning preparations, and as a flavoring agent.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44638). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, e-mail address: oppt.ncic@epamail.epa.gov., 401 M St., SW., Washington, DC 20460.

AUTHORITY: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: March 3, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–6016 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5702–4]

Final General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska (Permit Number AKG–31–0000)

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a final general permit.

SUMMARY: The Director, Office of Water, EPA Region 10 is issuing a General NPDES permit for facilities related to Oil and Gas Extraction on the North Slope of the Brooks Range in Alaska. This general permit regulates activities associated with the extraction of oil and gas on the North Slope of the Brooks Range in the North Slope Borough in the state of Alaska. The activities covered include sanitary and domestic discharges from mobile, exploration, development and production camps; gravel pit dewatering and the use of this water for the construction of ice structures and road watering; and construction dewatering. The permit establishes effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Alaska's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit were provided in the fact sheet and changes to the proposed general permit are documented in the Response to Comments.

DATES: The general permit will become effective on April 10, 1997 and will expire on April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Copies of the final general NPDES permit, response to comments, and today's publication will be provided upon request by calling the EPA Region 10, Public Information Office, at (800) 424–4372 or (206) 553–1200 or upon request by calling Cindi Godsey at (907) 269–7692. Requests may also be electronically mailed to: GODSEY.CINDI@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act. The state of Alaska, Office of Management and Budget, Division of Governmental Coordination (DGC), has certified that the general NPDES permit is consistent with the approved Alaska Coastal Management Program.

Comments were received which caused changes to the proposed permit. These are detailed in the Response to Comments. The following is a summary of some of the changes:

Discharges to non-frozen tundra will be authorized but the time a facility can discharge in one spot to tundra has been reduced from 7 to 5 days. A request for coverage shall be submitted at least 45 days prior to discharge rather than 60. ADEC has authorized a mixing zone for chlorine for discharges of sanitary wastewater to the tundra. The basis for the settleable solids limitation found in several categories of discharges has been changed from a technology-based limitation to a water quality-based one; this change requires that the effluent sample be compared to a sample representative of the natural conditions of a waterbody. The promulgation of New Source Performance Standards (NSPS) for sanitary and domestic wastewater in 40 CFR part 435, subpart D caused EPA to reconsider the basis for the floating solids requirement and it has been changed from a technology to a water quality-based limitation. NSPS also requires new development and production facilities to comply with the National Environmental Policy Act (NEPA) before coverage could be granted under this general NPDES permit.

Within 120 days following service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal this general NPDES permit in the Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: February 27, 1997.

Philip G. Millam,

Director, Office of Water.

Permit No.: AKG–31–0000

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1214

Authorization To Discharge Under the National Pollutant Discharge Elimination System (NPDES) for Facilities Related to Oil and Gas Extraction

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the ''Act,'' the following discharges are authorized in accordance with this General NPDES Permit:

Discharge name	Discharge No.
Sanitary Wastewater	001
Domestic Wastewater	002
Gravel Pit Dewatering	003
Construction Dewatering	004

from facilities listed in Permit Part I.A. and authorized according to Permit Part I.C. Discharges of pollutants not specifically set out in this permit are not authorized.

The area of coverage is Alaska's North Slope Borough (see Attachment C).

This permit shall become effective April 10, 1997.

This permit and the authorization to discharge shall expire at midnight, April 10, 2002.

Signed this 27th day of February, 1997.

Philip G. Millam,

Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

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VI. Definitions

I. Applicability and Notification Requirements

This permit does not authorize the discharge of pollutants to waters of the United States until the requirements of I.B., I.C. and I.D. below, are met.

A. Applicability

Discharges described in the following table can be authorized by this general permit:

Outfall	Facility	Discharge to	
		Fresh	Marine
Sanitary (001)	Mobile Camps	X	X[1]
Domestic (002)	Exploration	X	X[1]
Wastewater	Existing Development and Production	X	X[1]
	New Source Development and Production	X	X[1]
Gravel Pit: Dewatering (002)	Direct or Tundra Discharges	X	.....
	Ice Structures	X	X[2]
	Road Watering	X	.....
Construction Dewatering	Direct or Tundra Discharges	X	

[1] In the Coastal Area (defined in Permit Part VI.F.) and in the coverage area Subsequent to the NEPA process identifying the GP as the preferred alternative.
[2] Any area offshore of the coverage area.

B. Requests for Coverage

Persons requesting coverage under this general permit shall provide to EPA a written request to be covered by this permit at least 45 days prior to initiation of discharges. The request will be made in the form of a Notice of Intent (NOI), Office of Management and Budget (OMB) approval number 2040–0086. An NOI information sheet is Attachment A of this general permit. The NOI shall be signed by a responsible on-site representative.

C. Authorization to Discharge

The permittee's discharges are not authorized until the permittee receives

written notification that EPA has assigned a permit number under this general permit to operations at the discharge site. A permit number cannot be assigned unless EPA has a completed NOI.

D. Notice of Intent to Commence Discharges

The permittee shall notify EPA, Region 10, no later than seven days prior to initiation of discharges from the facility. The notification shall include the exact coordinates (latitude and longitude) of the operation. Mobile camps may designate an area where they will be operating and if the operation takes them outside the designated area, a new NOI would be necessary. Notification may be oral or in writing. The Best Management Practices (BMP) Plan shall be in place no later than the notification of commencement of discharges. If notification is given orally, written notification must follow within seven days.

E. Termination of Discharges

The permittee shall notify EPA when General Permit coverage is no longer needed at a site or within an area described by an NOI. This will terminate permit coverage at the site or within the area. The notification may be provided in a Discharge Monitoring Report (DMR), OMB approval number 2040–0004, or under separate cover.

F. Submission of Information

Reports and notifications required herein shall be submitted to the following address: Manager, NPDES Permits Unit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, OW–130, Seattle, WA 98101.

All monitoring reports and notifications of noncompliance: Manager, NPDES Compliance Unit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, OW–133, Seattle, WA 98101.

All of the above information shall also be sent to: Alaska Department of Environmental Conservation (ADEC), Watershed Development Group—Industrial Permits, 555 Cordova Street, Anchorage, Alaska 99501.

G. Changes From a General Permit to an Individual Permit

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s) is (are) a significant contributor of pollution.

b. The permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. A Water Quality Management Plan containing requirements applicable to such a point source is approved.

e. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) Discharge the same types of waste,

(3) Require the same effluent limitations or operation conditions, or

(4) Require the same or similar monitoring.

f. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit rather than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the authorization to discharge under this general permit is automatically terminated on the effective date of the individual permit.

I. Effluent Limitations and Monitoring Requirements

During the effective period of this permit, discharges from the following outfalls are authorized according to the terms and conditions of this general permit:

A. Sanitary Wastewater Discharges—Discharge 001

Discharges of Sanitary Wastewater shall be limited and monitored by the permittee in accordance with Parts III, IV, V and the following requirements:

1. Specific Limitations

a. The pH shall not be less than 6.5 nor greater than 8.5.

b. The discharge shall not, alone or in combination with other substances, cause a film, sheen or discoloration on the surface of the water or adjoining shorelines.

c. The following limits shall apply:

EFFLUENT LIMITATIONS

Parameter (units)	7-day average	30-day average	Daily Maximum	Units
Flow	.....	.....	15,000	Gallons/day.
Biochemical Oxygen Demand (BOD_5)	45	30	60	mg/L.
Total Suspended Solids (TSS)	45	30	60	mg/L.
Fecal Coliform	.....	20	40	#/100 ml.
Total Residual Chlorine (TRC):				
Open Waters	.....	.....	[1]2	µg/L.
Frozen Tundra [2]	.....	.....	4	mg/L.
Summer Tundra [2]	.....	.....	2	mg/L.

[1] In water bodies supporting salmonid fish, otherwise 10 µg/L.
[2] Discharges for no more than 5 days in one site.

2. Monitoring Requirements

MONITORING REQUIREMENTS

Parameter	Sample location	Sampling frequency	Type of sample
Total Flow	Effluent	Daily	Estimate.
BOD_5	Effluent	Weekly	Grab.
TSS	Effluent	Weekly	Grab.
pH	Effluent	Weekly	Grab.
Fecal Coliform	Effluent	1/Month	Grab.
TRC	Effluent	Weekly	Grab.

3. Discharges to Tundra Wetlands

In addition to meeting the above effluent limitations, the BMP Plan developed to comply with Permit Part II.E., below, will address such items as relocating the discharge point after 5 days of discharge, prevention of chlorine burn and excessive nutrient and/or sediment loading of the tundra.

B. Domestic Wastewater Discharges—Discharge 002

Discharges of Domestic Wastewater shall be limited and monitored by the permittee in accordance with Parts III, IV, V and the following requirements:

1. Specific Limitations

a. The discharge shall not, alone or in combination with other substances, cause a film, sheen or discoloration on the surface of the water or adjoining shorelines.

b. Kitchen oils from food preparation shall not be discharged.

2. Monitoring Requirements

MONITORING REQUIREMENTS

Parameter	Sample location	Sampling frequency	Type of sample
Total Flow	Effluent	Daily	Estimate.
Floating Solids	Effluent	Daily	Observation.
Foam	Effluent	Daily	Observation.
Oily Sheen	Effluent	Daily	Observation.

3. Discharges to Tundra Wetlands

In addition to meeting the effluent limitations above, the BMP Plan developed to comply with Permit Part II.E., below, will address such items as relocating the discharge point after 5 days of discharge and excessive sediment loading to the tundra.

C. Gravel Pit Dewatering—Discharge 003

Discharges from Gravel Pits shall be limited and monitored by the permittee in accordance with Parts III, IV, V and the following requirements:

1. Specific Limitations

EFFLUENT LIMITATIONS

Parameter	Minimum	Maximum	Units
Total Flow (MGD)		1.5	Million gallons per day.
Settleable Solids (SS)	No increase above natural conditions.		ml/L.
pH	6.5	8.5	Standard Units (S.U.).
Oily Sheen	No discharge of floating solids, visible foam or oily wastes which may cause a film, sheen, or discoloration on the surface or floor of the water body or adjoining shorelines. Surface waters must be virtually free from floating oils.		

2. Monitoring Requirements

MONITORING REQUIREMENTS.

Parameter	Sample location	Sampling frequency	Type of sample
Total Flow	Effluent	Daily	Estimate.
SS	Effluent	Weekly	Grab.
	Natural conditions [1]	Weekly	Grab.
pH	Effluent	Weekly	Grab.
Oily Sheen	Surface of the mine water and receiving water.	Daily	Visual.

[1] When discharging to open waters.

3. Ice Structures, Road Watering and Discharges to Tundra Wetlands

a. The Best Management Practices (BMP) Plan (the BMP Plan) developed to comply with Permit Part II.E., below, will address the methods used to dewater a gravel pit to meet the effluent limitations in Permit Part II.C.1. for a direct discharge.

b. Although effluent limitations will not be measured, the BMP Plan shall specify the above methods as the way a gravel pit will be dewatered when the water will be discharged to tundra wetlands or used in ice structures and road watering.

c. The BMP Plan shall address, when necessary, the operation and maintenance of the ice structures constructed using gravel pit water so there will be no detrimental effects on water quality prior to the melting of the ice road in the spring. The BMP Plan will also address, when necessary, the use of gravel pit water for road watering and outline the measures to prevent pollutants from the road bed from reaching waters of the United States.

D. Construction Dewatering—Discharge 004

Construction Dewatering Discharges shall be limited and monitored by the permittee in accordance with Parts III, IV, V and the following requirements:

1. Specific Limitations

EFFLUENT LIMITATIONS

Parameter	Minimum	Maximum	Units
Total Flow (GPD)			Gallons per day.
Settleable Solids (SS)	No increase above natural conditions	ml/L..	
Turbidity		5 NTUs above natural conditions	Nephelometric Units (NTU).

Monitoring Requirements

MONITORING REQUIREMENTS

Parameter	Sample location	Sampling frequency	Type of sample
Total Flow	Effluent	Daily	Estimate.
SS	Effluent	Daily	Grab.
	Natural conditions [1]	Daily	Grab.
Turbidity	Effluent	Daily	Grab.
	Natural conditions [1]	Daily	Grab.

[1] When discharging to open waters.

3. Discharges to Tundra Wetlands

a. The BMP Plan developed to comply with Permit Part II.E., below, shall address the methods used in construction dewatering to meet the effluent limitations in Permit Part II.D.1. for a direct discharge.

b. While effluent limitations will not be measured, the BMP Plan shall specify the above methods as the way construction dewatering will occur when the water will be discharged to tundra wetlands.

E. Best Management Practices Plan

1. Development. The permittee shall during the term of this permit operate the facility in accordance with the BMP Plan or in accordance with subsequent amendments to the BMP Plan. The BMP Plan shall be ready to implement when the 7 day notice of discharge is submitted. The permittee shall also amend this Plan to incorporate practices which shall achieve the objectives and specific requirements listed below. A copy shall be kept on-site and shall be made available to EPA and ADEC upon request.

2. Purpose. Through implementation of the BMP Plan the permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities.

3. Objectives. The permittee shall develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

a. The number and quantity of pollutants and the toxicity of the effluent generated, discharged or potentially discharged at the facility shall be minimized by the permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.

b. Under the BMP Plan, and any Standard Operating Procedures (SOPs) included in the BMP Plan, the permittee shall ensure proper operation and maintenance of the treatment facility.

4. Requirements. The BMP Plan shall be consistent with the objectives in Part 3 above and the general guidance contained in the publication entitled ''Guidance Manual for Developing Best Management Practices'' (U.S. EPA, 1993) or any subsequent revisions to the guidance document. The BMP Plan shall:

a. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structure:

(1) Name and location of the facility.

(2) A statement of BMP policy.

(3) Structure, functions, and procedures of the Best Management Practices Committee.

(4) Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the following:

(a) Modification of equipment, facilities, technology, processes, and procedures, and

(b) Improvement in management, inventory control, materials handling or general operational phases of the facility.

(5) Risk identification and assessment.

(6) Reporting of BMP incidents.

(7) Materials compatibility.

(8) Good housekeeping.

(9) Preventative maintenance.

(10) Inspections and records.

(11) Security.

(12) Employee training.

b. Include the following provisions concerning BMP Plan review:

(1) Be reviewed by appropriate engineering and managerial staff.

(2) Be reviewed and endorsed by the permittee's BMP Committee.

(3) Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement shall be certified by the dated signatures of each BMP Committee member.

c. Establish specific best management practices to meet the objectives identified in Part 3 this section, addressing each component or system capable of generating or causing a release of significant amounts of pollutants, and identifying specific preventive or remedial measures to be implemented.

d. Establish specific best management practices or other measures which ensure that the following specific requirements, if necessary, are met:

(1) Provide for dewatering of the gravel mines.

(2) Provide for the use of diffusers or other energy-dissipating structures at the terminus of the discharge pipes to minimize or abate erosion resulting from the discharge.

(3) Prevent hydrocarbon contamination of the gravel mine pits from equipment, machinery and other sources.

(4) Provide for the construction and use of settling ponds or basins as necessary to comply with the effluent limits of the permit.

(5) Reflect requirements under CWA section 402(p) and the storm water regulations at 40 CFR sections 122.26 and 122.44, and otherwise eliminate, to the extent practicable, contamination of storm water runoff.

(6) Require the use of low phosphate detergents.

5. Documentation. The permittee shall maintain a copy of the BMP Plan at the facility and shall make the plan available to EPA or ADEC upon request. All offices of the permittee which are required to maintain a copy of the NPDES permit shall also maintain a copy of the BMP Plan.

6. BMP Plan Modification. The permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to the receiving waters. The permittee shall also amend the BMP Plan, as appropriate, when operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the appropriate engineering and managerial staff.

7. Modification for Ineffectiveness. At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

F. Other Discharge Limitations

This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility or any pollutants that are not ordinarily present in such waste streams.

II. Monitoring, Recording, and Reporting Requirements

A. Representative Sampling

All samples for monitoring purposes shall be representative of the monitored activity, 40 CFR 122.41(j). To determine compliance with permit effluent limitations, ''grab'' samples shall be taken as established under Permit Part II. Effluent samples shall be collected prior to discharge to the receiving water.

B. Reporting of Monitoring Results

Monitoring results shall be summarized each month and reported on EPA Form 3320–1 (Discharge Monitoring Report) and submitted annually to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, NPDES Compliance Unit OW–133, Seattle, Washington 98101–3188, postmarked no later than January 31st for the preceding calendar year. If there is no wastewater discharge, the Permittee shall mark the DMR appropriately and submit the form as required above. If there is no discharge from an outfall for several consecutive months, these months may be combined on one DMR form (see Attachment B for an example). Reports shall also be submitted to ADEC, Watershed Development Group—Industrial Permits, 555 Cordova Street, Anchorage, AK 99501.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by the Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

F. Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Administrator or ADEC at any time. Data collected on-site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site for the duration of activity at the permitted location.

G. Notice of Noncompliance Reporting

1. Any noncompliance which may endanger health or the environment shall be reported as soon as the Permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the Permittee becomes aware of the occurrence.

2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the Permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Permit Part IV.G., Bypass of Treatment Facilities.); or

b. Any upset which exceeds any effluent limitation in the permit (See Permit Part IV.H., Upset Conditions.).

3. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

4. The Regional Administrator may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the NPDES Compliance Unit in Seattle, Washington, by phone, (206) 553–1846.

5. Reports shall be submitted to the addresses in Permit Part III.B., **REPORTING OF MONITORING RESULTS.**

H. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Permit Part III.G. above shall be reported at the time that monitoring reports for Permit Part II.A. are submitted. The reports shall contain the information listed in Permit Part III.G.3.

I. Inspection and Entry

The Permittee shall allow the Regional Administrator, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. At reasonable times, inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

III. Compliance Responsibilities

A. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The Permittee shall give advance notice to the Regional Administrator and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties

Sections 309(d) and 309(g) of the Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Permit Part IV.G., **BYPASS OF TREATMENT FACILITIES** and Permit Part IV.H., **UPSET CONDITIONS,** nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner so as to prevent any pollutant from such materials from entering navigable waters.

G. Bypass of Treatment Facilities

1. Bypass Not Exceeding Limitations

The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice

a. Anticipated bypass. If the Permittee knows in advance of the need

for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Permit Part III.G., **NOTICE OF NONCOMPLIANCE REPORTING.**

3. Prohibition of Bypass

a. Bypass is prohibited and the Regional Administrator or ADEC may take enforcement action against a Permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this section.

b. The Regional Administrator and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions Necessary for a Demonstration of Upset

A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was being properly operated at the time;

c. The Permittee submitted notice of the upset as required under Permit Part III.G., **NOTICE OF NONCOMPLIANCE REPORTING; AND**

d. The Permittee complied with any remedial measures required under Permit Part III.D., **DUTY TO MITIGATE.**

3. Burden of Proof

In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

IV. General Requirements

A. Changes in Discharge of Toxic Substances

Notification shall be provided to the Regional Administrator and ADEC as soon as the Permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Regional Administrator in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Regional Administrator in accordance with 40 CFR 122.44 (f).

B. Planned Changes

The Permittee shall give notice to the Regional Administrator and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part V.A.1.

C. Anticipated Noncompliance

The Permittee shall also give advance notice to the Regional Administrator and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

F. Duty to Provide Information

The Permittee shall furnish to the Regional Administrator and ADEC, within a reasonable time, any information which the Regional Administrator or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Regional Administrator or ADEC, upon request, copies of records required to be kept by this permit.

G. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts

in a permit application, or submitted incorrect information in a permit application or any report to the Regional Administrator or ADEC, it shall promptly submit such facts or information.

H. Signatory Requirements

All applications, reports or information submitted to the Regional Administrator and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Regional Administrator or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Regional Administrator and ADEC, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.H.2. must be submitted to the Regional Administrator and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification: ''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

I. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers

This permit may be automatically transferred to a new Permittee if:

1. The current Permittee notifies the Regional Administrator at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Regional Administrator does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

N. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

O. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act. No comments from OMB or the public were received on the information collection requirements in this permit.

V. Definitions

A. ADEC means the Alaska Department of Environmental Conservation.

B. Average Monthly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all ''daily discharges'' measured during a calendar month divided by the number of ''daily discharges'' measured during that month.

C. Average weekly discharge limitation means the highest allowable average of a minimum of seven consecutive days of samples.

D. BOD^5 means Biochemical Oxygen Demand.

E. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

F. Coastal means any location in or on a water of the United States landward of the inner boundary of the territorial seas.

G. Daily discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the ''daily discharge'' is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the ''daily discharge'' is

calculated as the average measurement of the pollutant over the day.

H. Domestic Wastewater means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys and laundries.

I. EPA means the Environmental Protection Agency.

J. GPD means Gallons per day.

K. A Grab sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

L. Maximum daily discharge limitation means the highest allowable ''daily discharge.''

M. mg/L means milligram per liter.

N. ml/L means milliliter per liter.

O. Natural condition means any physical, chemical, biological, or radiological condition existing in a waterbody before any human-caused influence on, discharge to, or addition of material to, the waterbody.

P. The Plan means the Best Management Practices Plan.

Q. Salmonid fish means fish in the family Salmonidae including but not limited to salmon, grayling, whitefish, char, trout, ciscoe, and inconnu.

R. Sanitary wastewater means human body waste discharge from toilets and urinals.

S. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

T. SS means settleable solids.

U. Territorial seas means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

V. TSS means Total Suspended Solids.

W. µg/L means microgram per liter.

X. Upset means an exception incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Attachment A
Company Name, Address, Phone Number
Facility Name, Location
Type of Facility, Is it a new source?
Type of wastewater
Receiving Water
Expected daily volume
Signature of responsible on-site official
Date
ATTACHMENTS B and C are available upon request.

[FR Doc. 97–6020 Filed 3–10–97; 8:45 am]
BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Extension Request—No change.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing collection requirements under 29 CFR Part 1602 *et seq.*, Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission has requested an extension of an existing collection as listed below.

DATES: Written comments on this notice must be submitted on or before April 10, 1997.

ADDRESS: The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Margaret Ulmer Holmes, EEOC Clearance Officer, 1801 L Street, N.W., Washington, D.C. 20507. Send comments regarding any aspect of the information collection to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, N.W., Washington, D.C. 20507 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EEOC, 725 17th Street, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Stephanie D. Garner, Senior Attorney, at (202) 663–4670 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION:

Type of Review: Extension—No change.

Collection Title: Recordkeeping and Reporting under Title VII and the ADA..

Form No.: None.

Frequency of Report: Other.

Type of Respondent: Employers with 15 or more employees are subject to Title VII and the ADA.

Description of Affected Public:

Responses: 627,000.

Reporting Hours: None.

Federal Cost: None.

Number of Forms: None.

Abstract: The Equal Employment Opportunity Commission (EEOC) enforces Title I of the Americans with Disabilities ACt (ADA) which prohibits discrimination against qualified individuals with disabilities and Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination against individuals on the basis of race, sex, religion or national origin. Section 107(a) of the ADA, 42 U.S.C. 12117 and section 709 of Title VII, 42 U.S.C. 2000e authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate to the enforcement of the Acts. The Commission's recordkeeping requirements appear at 29 CFR 1602. They require employers who are subject to those Acts shall to and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination requirements in employment.

This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are incorporated by reference into the ADA at section 107(a).

All employers subject to Title VII are subject to the ADA, and the same EEOC records retention requirements are applicable to both.

Burden Statement: The EEOC estimates that the number of respondents is approximately 627,000 employers. As the recordkeeping requirement does not require reports or

the creation or maintenance of new documents, the burden imposed by these regulations is none. The estimated total number of hours of annual burden is estimated to be 0.

Dated: March 4, 1997.
For the Commission

Maria Borrero,

Executive Director.

[FR Doc. 97–5962 Filed 3–10–97; 8:45 am]

BILLING CODE 7250–01–M

FEDERAL COMMUNICATIONS COMMISSION

Preparation for the 1997 World Radiocommunication Conference (WRC–97)

AGENCY: Federal Communications Commission and National Telecommunications and Information Administration.

ACTION: Notice; announcement of Draft Preliminary Proposals to WRC–97.

SUMMARY: The FCC and NTIA have released a second set of Joint Draft Preliminary Proposals for WRC–97. The public is provided a 30-day period, from the date of the release of the notice, to provide comment on the draft proposals. Copies of the draft proposals are available for inspection and photocopying at the FCC's International Reference Center, 2000 M Street, N.W., Room 102, Washington, D.C., and on-line at http://www.fcc.gov/ib/wrc97/. Final U.S. proposals will be determined by the Department of State based on the recommendations of the FCC and NTIA.

DATE: Comments must be submitted on or before March 25, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; Director, Office of Spectrum Plans and Policies, National Telecommunications and Information Administration, Department of Commerce, Room 4099, Washington, D.C. 20230.

FOR FURTHER INFORMATION: Crystal Foster, FCC, 202–418–0749, and William T. Hatch, NTIA, at 202–482–1138.

SUPPLEMENTARY INFORMATION: The FCC's WRC–97 Advisory Committee and NTIA, through the Interdepartment Radio Advisory Committee, announced on February 25, 1997, their approval of a second set of draft preliminary proposals for WRC–97. In accordance with the streamlined procedures developed to improve the United States conference preparation process, the agencies are providing the public with this early opportunity to review and comment on draft proposals before further consideration. Final U.S. proposals will be determined by the Department of State based on the recommendations of the FCC and NTIA.

The joint preliminary draft proposals seek to:

(10) Propose 3 levels of priority above routine priority, to protect maritime safety telecommunications: distress, urgency and safety. (Agenda Item 1.6.3)

(11) Provide for the common worldwide primary allocation of space-based active sensors in the bands 13.25–13.4 GHz and 13.4–13.75 GHz (Agenda Item 1.9.2)

(12) Realign allocations between 50.2–71 GHz to not only protect passive systems operating in the unique oxygen absorption frequency range, but also those of the inter-satellite service and the fixed and mobile services. Provide for changes to the allocations for the inter-satellite service to preclude interference to passive sensors. Provide for the allocation of the inter-satellite service in the band 65–71 GHz. (Agenda Item 1.9.4.3)

(13) Provide for the common worldwide primary allocation of space-based active sensors in the band 9500–9800 MHz. (Agenda Item 1.9.2)

(14) Upgrade the secondary allocation to provide for frequency spectrum at 35.5–36 GHz and 94–94.1 GHz for use by space-based active earth sensors. Add a footnote to limit the use of the 94–94.1 GHz band to spaceborne cloud radars. (Agenda Item 1.9.2)

(15) Provide for the common worldwide primary allocation of space-based active sensors in the band 17.2–17.3 GHz. (Agenda Item 1.9.2)

(16) Modify the simplified Radio Regulations developed at WRC–95. Modifications are presented in three parts. Part One, Chapter N–IX, Distress and Safety Communications for the Global Maritime Distress and Safety System; Part Two, Modifications to Article S18 (Articles 24 Licenses): Article S47 Operators Certificates (Article 55, Certificates for Personnel of Ship Stations and Ship Earth Stations,); Article S48 Personnel (Article 56, Personnel of Stations in the Maritime Mobile and the Maritime Mobile Satellite Service); and Part Three, Suppress Resolutions 200, 210 and 330 and No Change to Resoluation 331. (Agenda Item 1.6.1)

(17) Modify notification and registration of frequency assignments under Article S11. (Agenda Item 1)

(18) Modify Appendix S18 [18], Table of Transmitting Frequencies of the band 156–174 MHz for stations in the maritime mobile services; propose NOC for S5.287[669], propose a new resolution to review efficiency of use of the 156–174 MHz Band by the Maritime Mobile service,and modify Resolution 310 (Rev Mob.-87). (Agenda Item 1.6.2)

(19) Modify provisions of Articles S13 and S14. (Agenda Item 1)

(20) Revise Article S12/17 of the Radio Regulations. (Agenda Item 1.4)

Members of the public are invited to provide to the FCC and NTIA comments on the joint preliminary draft proposals. The deadline for comments on this second set of joint preliminary draft proposals is March 25, 1997. Timely comments will be considered by the FCC WRC–97 Advisory Committee.

Commenters should send an original plus one copy of their comment to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments should clearly note ''Reference No. ISP–96–005'' to ensure proper routing and should refer to specific proposals by their Joint Preliminary Draft Proposal number. Copies of then comments should also be submitted to the Director, Office of Spectrum Plans and Policies, National Telecommunications and Information Administration, Department of Commerce, Room 4099, Washington, D.C. 20230. Parties preferring to e-mail their comments should address their comments to WRC97@fcc.gov and WRC97@ntia.doc.gov and they should reference ''Second Draft Proposals'' in the subject line.

The draft proposals and comments received will be made available for public inspection at the FCC's International Reference Center, 2000 M Street, N.W., Room 102, Washington, D.C., 202–418–1492. Copies of the documents can also be purchased through the FCC's duplication contractor, ITS, Inc., 202–857–3800.

Further information about the FCC WRC–97 Advisory Committee, including its schedule of meetings and the draft proposals, is available on the Internet at http://www.fcc.gov/ib/wrc97/. Meetings of the Advisory Committee and its Informal Working Groups are open to the public.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5985 Filed 3–10–97; 8:45 am]

BILLING CODE 6712–01–P

Sunshine Act Meeting

March 6, 1997.

FCC to Hold Open Commission Meeting Thursday, March 13, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 13, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Office of Engineering and Technology.	Title: Amendment of Parts 2, 15, 18, 68 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment and to Implement a Mutual Recognition Agreement with the European Community. Summary: The Commission will consider a proposal to: 1) simplify existing equipment authorization processes; 2) deregulate the equipment authorization for certain types of equipment; 3) provide for electronic filing of applications for equipment authorization; and 4) implement a potential mutual recognition agreement for product ''conformity assessment'' with the European Community.
2	International and Office of Engineering and Technology.	Title: Allocation and Designation of spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in 40.5–42.5 GHz and Allocation of Spectrum at 46.9–47.0 GHz for Wireless Communications Services (RM–8811). Summary: The Commission will consider proposed changes to the U.S. Table of Frequency Allocations for Fixed-Satellite Services at 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz, along with related allocation proposals affecting the 40.5–42.5 GHz and 46.9–47.0 GHz bands.
3	Wireless Telecommunications.	Title: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS (GEN Docket No. 90–314 and ET Docket No. 92–100); Revision of the Commission's Rules on Pre-Grant Construction for Broadband and Narrowband PCS Licensees and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Narrowband PCS (PP Docket No. 93–253). Summary: The Commission will consider action concerning the future operation and licensing of narrowband Personal Communications Services.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its ____inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc/gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–6174–Filed 3–7–97; 11:11 am]

BILLING CODE 6712–01–M

[Report No. 2178]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

March 6, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Guidelines for Evaluating Environmental Effects of Radiofrequency Radiation. (ET Docket No. 93–62)

Number of Petitions Filed: 4.

Subject: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them.

Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services. (PR Docket No. 92–235)

Number of Petitions Filed: 2.

Subject: Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 Ghz Bands. (ET Docket No. 95–183, RM–8533)

Implementation of Section 309(j) of the Communications Act—Competitive Bidding 37.0–38.6 GHz and 38.60–40.0 GHz Bands. (PP Docket No. 93–253)

Number of Petitions Filed: 1.

Subject: Geographic partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees. (WT Docket No. 96–148)

Implementation of Section 257 of the Communications Act—Elimination of Market Entry Barriers. (GN Docket No. 96–113)

Number of Petitions Filed: 2.

Subject: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended. (CC Docket No. 96–149)

Number of Petitions Filed: 8.

Subject: Implementation of the Telecommunications Act of 1996;

Accounting Safeguards Under the Telecommunications Act of 1996. (CC Docket No. 96–150)

Number of Petitions Filed: 8.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5984 Filed 3–10–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other agencies to take this opportunity to comment on proposed a collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information collected under Section 416 Crisis Counseling Assistance and Training of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, to award grants to States to provide disaster mental health services.

Supplementary Information. The Crisis Counseling Assistance and Training Program was established to provide supplemental funding to States for short-term crisis counseling services to eligible victims of Presidentially declared disasters. The information collected is used by the Federal Emergency Management Agency to determine if funds are properly used, if the State' plan of services adequately addresses the mental health needs of the disaster survivors, and if the funds are supplemental to State and local resources as required by the Stafford Act. Information collection requirements are outlined in 44 CFR 206.171 Crisis Counseling Assistance and Training.

Collection of Information.

Title. Crisis Counseling Assistance and Training.

Type of Information Collection. Extension.

OMB Number: 3067–0166.

Form Numbers. SF 424, SF 269.

Abstract. Information collected under the Crisis Counseling Assistance and Training Program will be used by the FEMA to award grants to States to provide crisis counseling services. The information is collected in several forms: applications, quarterly reports, and financial reports.

The immediate services application is made by letter which includes a short description of the State or private mental health agency, their existing resources, and a justification for Federal assistance; the geographical area of the disaster where services will be provided; a brief plan of services indicating how the disaster victims and emergency responders mental health needs will be met; and a budget including an identification of the resources the State and local governments will commit, the number of staff and their salaries, the funding levels for different agencies if more than one are involved, and an estimate of the Federal assistance requested.

The regular program using SF 424, requires information similar to but more comprehensive than the immediate services application including: an estimate of the number of people affected by the disaster needing crisis counseling assistance; how the estimate was made; the extent of physical, psychological, and social problems observed; the types of mental health problems encountered by the victims and other relevant information; the length of time needed to administer the program and meet the mental health needs of those affected; and a detailed plan of services.

The plan of services should include: a time-phased implementation plan and time schedule for the hiring and training of staff and the services to be provided; a description of the types of services that will be offered and the length of time they will be available; a description of the organizational structure of the program; a description of the training program; a description of the facilities to be used; and a detailed budget.

Quarterly and final progress reports in narrative form and financial reports using SF 269 are required.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours. 4,896.

	Respondents	Frequency	Responses	Hours per response	Total hours
Immediate Services Program:					
Application	16	1	16	30	480
Final Report	16	1	16	18	288
Subtotal	16	1	32	Avg. 24	768
Recordkeeping	16			Avg. 24	384
Total	16	1	32		1,152
Regular Services Program:					
Application	12	1	12	80	960
Program Reports	12	2	24	40	960
Program Final Report	12	1	12	50	600
Final Expenditure Report (SF 269)	12	1	12	50	600
Subtotal	12	5	60	Avg. 52	3,120
Recordkeeping	12			Avg. 52	624
Total	12	5	60		3,744

Estimated Cost. $76,228.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSEE: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Diana Nordboe at (202) 646–4026 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 3, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–6026 Filed 3–10–97; 8:45 am]

BILLING CODE 6718–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning continuation of inserting the clause at 48 CFR 4452.226–1, Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities, in FEMA contracts under which contractors will plan meetings, conferences and seminars which may be attended by persons with disabilities.

Supplementary Information. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits Federal agencies from discriminating against qualified persons on the grounds of disability. The law not only applies to internal employment practices but extends to agency interaction with members of the public who participate in FEMA programs. (FEMA's implementation of Section 504 of this Act is codified at 44 CFR Part 16.) Contractors who plan meetings, conferences, or seminars for FEMA must develop a plan to ensure that minimum accessibility standards for the disabled as set forth in the contract clause will be met. The plan must be approved by a FEMA Contracting Officer.

Collection of Information.

Title. FEMA Contract Clause—Accessibility of Meetings to Persons with Disabilities.

Type of Information Collection. Extension of a currently approved collection.

OMB Number: 3067–0213.

Abstract. Contractors who plan meetings, conferences or seminars for FEMA must submit a plan to the Contracting Officer detailing how the minimum accessibility standards for the disabled set forth in the contract clause will be met.

Number of Responses: FEMA estimates that 10 contractors would be required to comply annually with the contract clause, with an average of 3 hours per response to prepare the plan.

Frequency of Response: One response per year per contract, using a consolidated plan for multiple meetings under one contract.

Affected Public: Business and other for-profit.

Estimated Total Annual Burden Hours. 30 hours.

Estimated Cost. $90.00.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSEE: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact: Beverly Driver, Procurement Analyst, Acquisition Support Division, (202) 646–3745. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 3, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–6027 Filed 3–10–97; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 224–201019.

Title: DRS/PRPA Berthing & Space Tioga Marine Terminal Agreement.

Parties: Philadelphia Regional Port Authority (''PRPA'') Delaware River Stevedores, Inc. (''DRS'').

Synopsis: The proposed Agreement provides that PRPA will allow DRS certain berthing rights for the M/V ELISE–D, as well as with 37,500 square feet of storage space in Transit Shed #1, and 10,000 square feet of storage space on the terminal. In exchange for these rights DRS will pay PRPA wharfage, dockage and storage fees. The term of the Agreement is for sixty days.

By Order of the Federal Maritime Commission.

Dated: March 6, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–6037 Filed 3–10–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the

Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 2773.
Name: Ben & Brothers Forwarding Corp.
Address: 901 Castle Road, Secaucus, NJ 07094.
Date Revoked: January 22, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3319.
Name: SBR International Corp.
Address: 1425 N.W. 88th Avenue, 1st Floor, Miami, FL 33172.
Date Revoked: January 29, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 2330.
Name: Leslie David Lewis d/b/a Les Lewis.
Address: 1010 East Dallas Road, Grapevine, TX 76051.
Date Revoked: January 30, 1997.
Reason: Surrendered license voluntarily.

License Number: 437.
Name: Leading Forwarders, Inc.
Address: 2975 Kennedy Blvd., Jersey City, NJ 07306.
Date Revoked: February 10, 1997.
Reason: Surrendered license voluntarily.

Bryant L. Van Brakle,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–5953 Filed 3–10–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Transglobal Solutions, 1808 Arlington Avenue, Torrance, CA 90501, Jin Miyamoto, Managing Partner, William Robert Parkinson, Partner, Jerry Lee Russell, Jr., Partner

International Transportation Services, Inc., 573 S.W. 169th Avenue, Fort Lauderdale, FL 33326, Officer: Steve M. Snyder, President

Hanover Shipping Corporation, 1 Gina Court, East Hanover, NJ 07936 Officers: Rohini Kumar Vemula, President, Divyajyothi R. Vemula, Director

Albany Freight, Inc., 5245 N.W. 36 Street, Suite 230, Miami Springs, FL 33166, Officer: Caridad C. Gonzalez, President

Dated: March 5, 1997.

Joseph C. Polking,
Secretary.

[FR Doc. 97–5954 Filed 3–10–97; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 97–04]

Ever Freight International Ltd., Sigma Express Inc., and Mario F. Chavarria dba Transcargo Intl.—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984; Order of Investigation and Hearing

Ever Freight International Ltd. (''Ever Freight'') is a tariffed and bonded non-vessel-operating common carrier (NVOCC) located at 18th Floor, Kam Sang Building, 255–257 Des Voeux Road Central, Sheung Wan in Hong Kong. Ever Freight holds itself out as an NVOCC pursuant to its ATFI tariff FMC No. 001, filed June 17, 1996.

Ever Freight currently maintains an NVOCC bond, No. 8941414, in the amount of $50,000 with the Washington International Insurance Company, located in Schaumburg, Illinois. Pursuant to Rule 24 of Ever Freight's tariff, Washington International Insurance Company also serves as the U.S. resident agent for purposes of receiving service of process on behalf of Ever Freight International Ltd.

Ever Freight is believed to have been established by former employees of Goldline Ltd., an NVOCC which has operated without a tariff or bond since May 1995.[1] Likewise, Ever Freight is believed to have operated as an NVOCC from March 1996 through June 16, 1996 without benefit of the bond or tariff required by the 1984 Act. During that period and at times subsequent to the filing of its tariff and bond, Ever Freight participated in numerous apparent acts of misdescription of cargo on shipments from Hong Kong to the U.S., in concert with U.S. consignees Sigma Express Inc. and Mario F. Chavarria d/b/a/ Transcargo International, among others.

Respondent Sigma Express Inc. (''Sigma Express'') is a tariffed and bonded NVOCC located at 11222 La Cienaga Blvd., Suite 330, Inglewood, California 90304. The President of Sigma Express is Echo Tsai. As relevant herein, Sigma Express acts as the U.S. consignee and notify party on certain inbound NVOCC shipments from Ever Freight.

Respondent Mario F. Chavarria is a licensed ocean freight forwarder (FMC license No. 4175) and a tariffed and bonded NVOCC doing business as Transcargo International (''Transcargo''). Transcargo's offices are located at 5155 Rosecrans Avenue, Suite 110, Hawthorne, California 90250. As relevant herein, Transcargo acts as the U.S. consignee and notify party on certain inbound NVOCC shipments from Ever Freight.

It appears that Ever Freight, acting as shipper in relation to an ocean common carrier, misdescribed the commodity on numerous shipments transported by an ocean common carrier between March 1, 1996 and December 31, 1996.[2] The shipments primarily originated in Hong Kong, and were destined for Los Angeles and other U.S. ports and points. In each of these instances, Ever Freight was listed as shipper on the ocean carrier's bill of lading, and Ever Freight destination agents in the U.S., including respondents Sigma Express and Transcargo, acted as the consignee or notify party. Each shipment generally reflects that an Ever Freight ''house'', or NVOCC, bill of lading was issued for tender by the ultimate consignee to Ever Freight's agent upon arrival of the cargo at destination, which correctly describes the commodity shipped.

It further appears that the ocean common carrier rated the commodities in accordance with the inaccurate description furnished by Ever Freight, while the U.S. consignees of Ever Freight's shipments accepted delivery of the cargo and made payment to the ocean common carrier on the basis of the lower rate attributable to the inaccurate commodity description. Contemporaneous with the payment of any freight due to the ocean common carrier, Ever Freight's agents in the U.S also would issue arrival notices and

[1] Goldline currently operates under the name Comm-Sino Ltd. but has adopted numerous pseudonyms in the past, including Harvesta Ltd., Gain Sharp Trading, Truest Ltd., Vastmas Intl. Ltd. and Wellsources Ltd. A formal investigation, FMC Docket No. 96–19, is presently underway as to Comm-Sino, alleging violations of sections 10(a)(1) and 10(b)(1).

[2] Based on import data available from the PIERS subsidiary of the Journal of Commerce, Ever Freight has acted as shipper on over 1100 inbound shipments during the nine month period ending November 1996, accounting for nearly 2700 TEUs of cargo. PIERS reports that the primary ocean common carriers transporting cargo on behalf of Ever Freight are Sea-Land and Hanjin Shipping, which together account for 95% of the total tonnage moved during this period. More than 200 of these shipments originated during the months of March–June 1996, at a time when Ever Freight did not yet have any tariff rates effective for its NVOCC services.

obtain payment of the NVOCC's freight charges from the U.S. importer, in each case correctly describing the commodity based on actual contents shipped.

In addition, during time periods subsequent to the filing of Ever Freight's NVOCC tariff and bond in June 1996, Ever Freight appears both as shipper and as a carrier issuing its own (Ever Freight) NVOCC bill of lading with respect to the commodity being shipped. The rates assessed and collected by Ever Freight and its U.S. agents for these shipments, however, bear no relation to the rates set forth in Ever Freight's ATFI tariff on file with the Commission.[3] Since Ever Freight has never subsequently modified its tariff rates, it would appear that all shipments in which Ever Freight issued its NVOCC bill of lading may be found to constitute violations of section 10(b)(1) of the 1984 Act.

Section 10(a)(1) of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app § 1709(a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10(b)(1), 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations. Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year, while section 23 of the 1984 Act, 46 U.S.C. app. § 1721 provides for a similar suspension in the case of violations of section 10(a)(1) of the 1984 Act. Finally, section 19(b) of the 1984 Act, 46 U.S.C. app. § 1717(b), provides that the license of a freight forwarder shall be suspended or revoked if it appears that the licensee is no longer qualified to render forwarding services to the public or has willfully failed to comply with any provisions of the 1984 Act.

Now therefore, it is ordered, That pursuant to section 10, 11, 13, 19 and 23 of the 1984 Act, 46 U.S.C. app. §§ 1709, 1710, 1712, 1717 and 1721, an investigation is instituted to determine:

(1) Whether Ever Freight International Ltd., Sigma Express Inc., and Mario Chavarria dba Transcargo International, violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining transportation at less than the rates and charges otherwise applicable through the means of misdescription of the commodities actually shipped;

(2) Whether Ever Freight International Ltd., in its capacity as a common carrier, violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff;

(3) Whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, civil penalties should be assessed against Ever Freight International Ltd., Sigma Express Inc. and Mario F. Chavarria dba Transcargo International and, if so, the amount of penalties to be assessed against any or all of the parties;

(4) Whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Ever Freight International Ltd. should be suspended;

(5) Whether, in the event violations of sections 10(a)(1) of the 1984 Act are found, the freight forwarding license of Mario F. Chavarria should be suspended or revoked; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued against any or all of the parties.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Ever Freight International Ltd., Sigma Express Inc. and Mario F. Chavarria dba Transcargo International are designated as Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's rules of practice and procedure, the initial decision of the Administrative Law Judge shall be issued by March 6, 1998 and the final decision of the Commission shall be issued by July 6, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 97–6038 Filed 3–10–97; 8:45 am]

BILLING CODE 6730–01–M

[3] Since filing its tariff in the ATFI system in June 1996, Ever Freight has maintained a tariff consisting only of three classes of Cargo N.O.S. rates. Ever Freight does not publish ''per container'' rates, nor does it appear to charge those Cargo N.O.S. rates which it does publish, inasmuch as its rates are tariffed solely on a weight/measurement (W/M) ton basis.

FEDERAL TRADE COMMISSION

[File No. 952–3275]

Apple Computer, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to

final Commission approval, would require, among other things, the Cupertino, California-based computer hardware and software manufacturer to offer Power PC Upgrade Kits, at less than half the original price, to each consumer who purchased one of three of the company's entry-level ''Performa'' model personal computers. Apple has already agreed to rebate $776 of the original price to consumers who have already purchased the upgrade. The complaint accompanying the consent agreement alleges that Apple misrepresented that the upgrade was available to consumers at the time that they purchased a Performa or within a reasonable period of time thereafter.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5276.

Linda Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5275.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for March 3, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Apple Computer, Inc. (hereinafter ''Apple'' or ''respondent''). Apple is a major manufacture and marketer of personal computer hardware and software products.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on Apple's advertisements for the ''Performa 550,'' ''Macintosh LC 550,'' and ''Performa 560'' personal computers. The Performa 550, Macintosh LC 550, and Performa 560 models are based on the Motorola 680030 microprocessor. While continuing to promote the sale of these computers, respondent introduced a new series of computers based on the faster, more powerful ''PowerPC'' microprocessor.

Beginning on or about April 1, 1994, subsequent to the introduction of the PowerPC microprocessor, respondent advertised Performa 550, Macintosh LC 550, and Performa 560 computers as upgradeable to PowerPC performance. A PowerPC upgrade, however, was not offered for at least one year after Apple began representing that these computers were upgradeable. Further, by the time Apple made the upgrade available, its price approached the cost of an entirely new computer with a PowerPC microprocessor.

The proposed complaint alleges that Apple made false claims that: (1) A PowerPC upgrade was available to consumers at the time that they purchased a Performa 550 or Performa 560 computer; and (2) a PowerPC upgrade would be available within a reasonable period of time after the purchase of a Performa 550, Macintosh LC 550, or Performa 560 computer.

The proposed complaint further alleges that Apple deceptively failed to disclose that the PowerPC upgrade package for the Performa 550, Macintosh LC 550, or Performa 560 computers would include not only a PowerPC upgrade card, but also a new logic board. As a result, the complaint alleges, consumers were not aware that they would have to incur the cost and inconvenience associated with the replacement of the logic board.

Part I of the proposed order prohibits Apple from misrepresenting the availability of any microprocessor upgrade product. Part II of the proposed order prohibits Apple from representing that any computer hardware product is currently upgradeable, unless at the time such representation is made, the upgrade is then available, in reasonable quantities to the public, given good-faith projections of anticipated demand.

Parts III and IV of the proposed order address Apple's failure to disclose that the upgrade product for the Performa 550, Macintosh LC 550, or Performa 560 computers would include a new logic board in addition to an upgrade card. Part III provides that Apple, when marketing any microprocessor upgrade product that incorporates a new logic board, may not represent that such product is an ''upgrade'' unless it clearly and prominently discloses that a new logic board is a component of the upgrade product.

Part IV of the proposed order prescribes a redress program under which Apple is required to offer a PowerPC Upgrade Kit for the reduced price of $599 to consumers who purchased a Performa 550, or Macintosh LC 550 computer after Apple began advertising them as upgradeable. Under Part IV, the kit will include all of the hardware necessary for the upgrade, as well as four megabytes of RAM, two essential pieces of PowerPC software, and a coupon for free installation of the upgrade redeemable at any authorized Apple service location.

Under Part IV, Apple has the option of providing eligible consumers with a new PowerPC system in lieu of the upgrade kit. This provision is designed to protect consumers if Apple runs out of the hardware necessary to build the upgrade kits. Any consumer who receives a new system will have to return the old computer to an authorized Apple dealer. Apple will then be responsible for arranging for the dealer to transfer all the consumer's data and peripherals to the new PowerPC, and for testing the new system to make certain that it is functional.

To compensate the consumers who have already purchased an upgrade for one of the relevant computers, Part IV of the proposed order requires Apple to rebate $776.00 of the original purchase price of $1,375.00.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or

representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–6056 Filed 3–10–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3708]

Victoria Bie d/b/a Body Gold; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based dietary supplement manufacturer from making certain claims for dietary supplements, without competent and reliable scientific evidence to support them; from misrepresenting the results of any test, study or research; and from representing that any testimonial or endorsement is the typical experience of users of the advertised product, unless the claim is substantiated or the respondent discloses the generally expected results clearly and prominently.

DATES: Complaint and Order issued January 22, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Sohni Bendiks, Federal Trade Commission, Denver Regional Office, 1961 Stout St., Suite 1523, Denver, Co. 80294. (303) 844–3923.

SUPPLEMENTARY INFORMATION: On Friday, November 15, 1996, there was published in the Federal Register, 61 FR 58559, a proposed consent agreement with analysis In the Matter of Victoria Bie d/b/a Body Gold, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 97–6055 Filed 3–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3705]

Computer Business Services, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, an Indiana home-based computer business opportunity firm and three principals from misrepresenting the earnings or success rate of investors; the existence of a market for their products or services; the amount of time it would take investors to recoup their investments and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless they possess reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements. In addition, the consent order requires that advertisements for automatic telephone dialing systems disclose federal restrictions on their use and requires the respondents to pay $5 million in consumer redress.

DATES: Complaint and Order issued January 21, 1997.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: On Tuesday, August 27, 1996, there was published in the Federal Register, 61 FR 44061, a proposed consent agreement with analysis In the Matter of Computer Business Services, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 97–6052 Filed 3–10–97; 8:45 am]

BILLING CODE 6730–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Docket C–3704]

Montana Associated Physicians, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, two Montana-based organizations from entering or attempting to enter into any agreement with physicians to: Negotiate or refuse to deal with any third-party payer; determine the terms on which physicians deal with such payers; or fix the fees charged for any physician's services. In addition, the consent order prohibits the respondents from advising physicians to raise, maintain or adjust the fees charged for their medical services, or encouraging adherence to any fee schedule for physician's services.

DATES: Complaint and Order issued January 13, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Robert Leibenluft, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: On Monday, November 4, 1996, there was published in the Federal Register, 61 FR 56682, a proposed consent agreement with analysis In the Matter of Montana Associated Physicians, Inc., et al., for the purpose of soliciting public

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 97–6053 Filed 3–10–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3709]

Time Warner Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires the restructuring of the acquisition by Time Warner of Turner Broadcasting Systems, Inc. by, among other things, requiring Tele-Communications, Inc. (TCI) to divest its interest in Time Warner to a separate company, requiring TCI, Turner and Time Warner to cancel long-term carriage agreements, barring Time Warner's programming interests from discriminating in carriage decisions against rival programmers, and requiring Time Warner's cable interests to carry a rival to CNN.

DATES: Complaint and Order issued February 3, 1997.[1]

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, D.C. 20580. (202) 326–2932.

SUPPLEMENTARY INFORMATION: On Wednesday, September 25, 1996, there was published in the Federal Register, 61 FR 50301, a proposed consent agreement with analysis In the Matter of Time Warner Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–6054 Filed 3–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Pitofsky, Steiger, Varney, Azcuenaga and Starek are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 718]

Cooperative Agreement for 1997 National Breast and Cervical Cancer Early Detection Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1997 for cooperative agreements to develop State, territorial, and tribal comprehensive breast and cervical cancer early detection programs.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Cancer. (To order a copy of ''Healthy People 2000,'' see the section ''Where to Obtain Additional Information.'')

Authority

This program is authorized by sections 1501, 1502 and 1507 (42 U.S.C. 300k, 42 U.S.C. 300*l*, and 42 U.S.C. 300n–3) of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Assistance will be provided only to the official health departments of States, or their bona fide agents or instrumentalities and to American Indian tribes. This includes American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, and federally recognized Indian tribal governments (this includes Indian tribes, tribal organizations, and urban Indian organizations, hereby referred to as tribes).

1. The following States and territories are excluded:

a. Alabama, Delaware, Hawaii, Idaho, Indiana, Kentucky, Mississippi, Montana, New Hampshire, Nevada, North Dakota, Northern Mariana Islands, Republic of Palau, South Dakota, Tennessee, Virgin Islands, Virginia, Washington, DC, and Wyoming, which were funded in September of 1996, under Program Announcement 623 entitled ''1996 National Breast and Cervical Cancer Early Detection Program.''

b. New York, Pennsylvania, Ohio, Wisconsin, Massachusetts, and Washington, which were funded in September 1993, under Program Announcement 321 entitled ''Early Detection and Control of Breast and Cervical Cancer.''

c. Florida, Oklahoma and Utah, which were funded in September 1994, under Program Announcement 321 entitled ''Early Detection and Control of Breast and Cervical Cancer.''

d. Alaska, Georgia, Maine, Oregon, and Rhode Island, which were funded in September 1994, under Program Announcement 474 entitled ''Early Detection and Control of Breast and Cervical Cancer.''

e. Arizona, Arkansas, Connecticut, Iowa, Illinois, Kansas, Louisiana, New Jersey, and Vermont, which were funded in March 1995, under Program Announcement 474 entitled ''Early Detection and Control of Breast and Cervical Cancer.''

2. The following tribes are excluded:

a. Arctic Slope Native Association, Limited, AK; Cherokee Nation, OK; Cheyenne River Sioux Tribe, SD; Eastern Band of Cherokee Indians, NC; Maniilaq Association, AK; Pleasant Point Passamaquoddy, ME; Poarch Band of Creek Indians, AL; South Puget Planning Agency, WA; and Southcentral Foundation, AK, which were funded under the American Indian Initiative Program Announcement 442.

b. Hopi Tribe, AZ; Native American Rehabilitation Association of the NW, OR; Indian Community Health Service; AZ; and the Navajo Division of Health, AZ, which were funded in September of 1996, under Program Announcement 623 entitled ''1996 National Breast and Cervical Cancer Early Detection Program.''

States currently receiving CDC funds under Program Announcement 121 and 122, entitled ''Early Detection and Control of Breast and Cervical Cancer,'' are eligible to apply for funding under this announcement. Additionally, those programs currently funded under Program Announcement 425 (Puerto Rico and American Samoa) are eligible to apply under this announcement. If currently funded under Program Announcement 425, no additional new funding will be available at the end of the current 12-month budget period. Thereafter, a 12-month no-cost extension may be approved to complete capacity-building activities that have been initiated.

Availability of Funds

Approximately $37 million is available in FY 1997 to fund approximately fourteen awards to States/territories/tribes. It is expected that the average award will be $1,500,000 ranging from $200,000 to $3,000,000.

It is expected that these awards will begin on August 15, 1997, and will be made for 12-month budget periods within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Recipient Financial Participation

Section 1502 (a) and (b)(1), (2), and (3) of the PHS Act, as amended, states that matching funds are required from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program.

The matching funds may be in cash or its equivalent in-kind or donated services, including equipment, fairly evaluated. The contributions may be made directly or through donations from public or private entities.

In some States/territories/tribes, non-Federal funds from a variety of sources may presently be used to support one or more of the breast and cervical cancer early detection activities described in this program announcement. Maintenance of Effort (MOE)—Non-Federal funds in excess of the average amount expended during the two years preceding the first fiscal year that a State/territory/tribe applies for funding may be used as match. Supplantation of existing program efforts funded through other Federal or non-Federal sources is unallowable. Applicants may also include, as State/territory/tribe matching funds, any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the screening, follow-up and referral of women for breast and cervical cancer.

Matching funds may not include: (1) The payment for treatment services or the donation of treatment services (see note below); (2) services assisted or subsidized by the Federal Government; or (3) the indirect or overhead costs of an organization.

Note: Treatment is defined as any service recommended by a clinician including medical and surgical intervention provided in the management of a diagnosed condition.

Background

Breast Cancer

In the United States, approximately 500,000 women will die this decade from breast and cervical cancer. Among women, breast cancer accounts for 29 percent of all new cancer cases and is the second leading cause of cancer related deaths. An estimated one of every eight women in the United States will develop breast cancer in her lifetime. The American Cancer Society estimated that in 1996, 184,300 women would be diagnosed with invasive breast cancer and 44,300 women would die of this disease. Death rates from the disease are highest among women aged 40 or more years, and among black women as compared to white women for those aged less than 70 years.

It is not currently known how to prevent breast cancer from occurring. Thus, detecting carcinoma of the breast at an early stage is the key to more treatment options, improved survival, and decreased mortality. Research has shown that the use of mammography can reduce the mortality due to breast cancer among women 50 years and older by 30 percent.

The percent of women who are regularly screened for breast cancer decreases with age. The baseline data on mammography use from the 1987 National Health Interview Survey show that only 23 percent of women 50 years and older reported having received a mammogram within the past three years. This proportion was lower for racial and ethnic minority women, for women who had less than a high school education, for women who were over age 75 years, and for women who were living below the poverty level. In Healthy People 2000, the Public Health Service (PHS) recommended that by the year 2000, 60 percent of women aged 50 years and older should receive a mammogram every two years.

Cervical Cancer

The overall incidence of invasive cervical cancer has decreased steadily over the last several decades, but in recent years, this rate has increased among women who are less than 50 years old. In 1996, invasive cervical cancer was diagnosed in approximately 15,700 women, and carcinoma in situ was diagnosed in about 65,000 women, and about 4,900 women died of cervical cancer.

The primary goal of cervical cancer screening is to increase detection and treatment of precancerous cervical lesions and thus prevent the occurrence of cervical cancer. Although no clinical trials have studied the efficacy of Papanicolaou (Pap) test in reducing cervical cancer mortality, experts agree that it is an effective technology. Since the introduction of the Pap test in the 1940s, cervical cancer mortality rates have decreased by 75 percent.

In 1991, the PHS established that by the year 2000, 85 percent of women should be receiving a Pap test within the preceding one to three years. Baseline data on the use of the Pap test from the 1987 National Health Interview Survey (NHIS) showed that only 65 percent of women aged 18 years and older reported having received a Pap test within the past three years. As with mammography screening, this proportion was lower for racial and ethnic minority women, for women who had less than a high school education, for women who were over age 75 years, and for women who had low incomes.

National Breast and Cervical Cancer Early Detection Program

In 1990, the U.S. Congress passed ''The Breast and Cervical Cancer Mortality Prevention Act,'' Pub. L. 101–354. This legislation enables CDC, in partnership with State health agencies and territories, to make breast and cervical cancer screening, referral, tracking and follow-up services available and accessible to women, with priority for services given to low income, and uninsured and under-insured women. Many women do not have access to a well-coordinated and integrated health care system that provides screening, follow-up, and

treatment services because of social, financial, and geographic barriers.

In accordance with Pub. L. 101–354, a comprehensive program includes the following program components: (1) Breast and cervical cancer screening; (2) referral and follow-up; (3) public education; (4) professional education; (5) quality assurance; (6) surveillance and program evaluation; and (7) partnership development and community involvement. The importance of these program components and a systematic, coordinated approach is universally appreciated as necessary to ensure maintenance of quality, comprehensive, state/territory-/tribe-wide services. This comprehensive effort offers an opportunity to build a State/territorial/tribal infrastructure for breast and cervical cancer control.

Program success is enhanced when State/territorial/tribal resources and efforts are combined with those of other State/territorial/tribal programs, voluntary organizations, private sector organizations, and community-based organizations through partnership development. State/territorial/tribal comprehensive breast and cervical cancer control programs can make a vital contribution to the nationwide effort to reduce morbidity and mortality and improve quality of life.

Purpose

The purpose of this program is to establish a State/territorial/tribal comprehensive public health approach to reduce breast and cervical cancer morbidity and mortality through screening, referral and follow-up, public education and outreach, professional education, quality assurance, surveillance, evaluation, partnership development and community involvement. The program is established to provide for comprehensive breast and cervical cancer screening services for all women who are unable to afford them. Criteria for priority populations are uninsured or under-insured older women who are racial, ethnic and cultural minorities, such as American Indians, Alaskan Natives, African-Americans, Hispanics, Asian/Pacific Islanders, Lesbians, women with disabilities, or women who live in hard-to-reach communities in urban and rural areas. Priority populations, as defined above, will be used throughout this document.

Program Requirements

In accordance with Pub. L. 101–354, an award may not be made unless the State/territory/tribe involved agrees that:

1. Not less than 60 percent of cooperative agreement funds will be expended for screening, appropriate referral for medical treatment, and, to the extent practicable, the provision of appropriate follow-up services. The remaining 40 percent will be expended to support public education, professional education, quality assurance, surveillance, program evaluation, partnership development and community involvement, and related program activities. (Section 1503(a) (1) and (4) of the PHS Act, as amended.) Of the proportion of funds required for screening and diagnostic services, the majority should be directed toward breast health. Refer to the most current CDC National Breast and Cervical Cancer Early Detection Program Administrative Requirements and Guidelines for more information.

2. States, territories, and tribes are required to implement all program components by the schedule that follows:

a. States presently receiving comprehensive funding:

All program components should be operational at this time.

b. Territories/tribes presently receiving capacity funding:

Comprehensive breast and cervical cancer screening, referral, follow-up and tracking services should be initiated within the first twelve months of the first budget year. The capacity building program components (not the screening, referral, follow-up and tracking system) should be fully operational by the end at this time.

c. Territories/tribes not presently receiving capacity funds and applying for comprehensive funding:

The application should outline plans for the operation of all program components. The screening, follow-up and referral services should be initiated within twelve months of the award date. (Section 1503(a) (1) and (3) of the PHS Act, as amended.)

3. Cooperative agreement funds will not be expended to provide inpatient hospital or treatment services. (Section 1504(g) of the PHS Act, as amended.) Treatment is defined as any service recommended by a clinician, including medical and surgical intervention provided in the management of a diagnosed condition. Also, cooperative agreement funds will not be used for the specific diagnostic procedures of breast biopsy and Loop Electrosurgical Excisional Procedure (LEEP).

4. Not more than 10 percent of funds will be expended annually for administrative expenses. These administrative expenses are in lieu of and replace indirect costs. (Section 1504(f) of the PHS Act, as amended.)

5. Matching funds are required from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. (Section 1502 (a) and (b) of the PHS Act, as amended.)

6. Costs used to satisfy matching requirements are subject to the same prior approval requirements and rules of allowability as those which govern project costs supported by Federal funds (Office of Management and Budget (OMB) Circular A–87 ''Cost Principles for State, Local and Indian Tribal Governments'' and PHS Grants Policy Statement, Section 6).

7. All costs used to satisfy matching requirements must be documented by the applicant and will be subject to audit.

8. If a new or improved, and superior, screening procedure becomes widely available and is recommended for use, this superior procedure will be utilized in the program. (Section 1503(b) of the PHS Act, as amended.)

9. An award may not be made unless the State Medicaid Program provides coverage for:

a. In the case of breast cancer, a clinical breast examination and screening mammography.

b. In the case of cervical cancer, both a pelvic examination and Pap test screening. (Section 1502A of the PHS Act, as amended.)

10. In 1993, congressional amendments to the National Breast and Cervical Cancer Early Detection Program included the following changes:

a. States/territories/tribes may enter into contracts with private for-profit entities to provide screening and diagnostic services only. Contracts for other kinds of services with for-profit agencies are not allowed.

b. The amount paid by a State/territory/tribe for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act (Medicare).

c. All facilities conducting mammography screening procedures funded by the Program must meet the regulations for mammography quality assurance developed by the Food and Drug Administration (FDA).

d. For cervical cancer activities, facilities will meet the standards and regulations developed by the Health Care Financing Administration (HCFA) implementing the Clinical Laboratory Improvement Amendments (CLIA) of 1988.

In accordance with section 1504 (c)(2) of the PHS Act, as amended, CDC may waive the requirements for specific

services/activities if it is determined that compliance by the State/territory/tribe would result in an inefficient allocation of resources with respect to carrying out a comprehensive breast and cervical cancer early detection program (as described in section 1501(a)). A request from the recipient outlining appropriate and detailed justification would be required before the waiver is approved.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A.(Recipient Activities), and CDC will be responsible for conducting activities under B.(CDC Activities).

A. Recipient Activities

1. Establish a system for screening women for breast and cervical cancer as a preventive health measure. (Section 1501(a)(1) of the PHS Act, as amended.)

This program is to increase the utilization of screening services for breast and cervical cancer among all women with emphasis being given to identified priority populations as described under the ''Purpose'' section.

a. Ensure that screening procedures are available for both breast and cervical cancer and provided to women participating in the program, including a clinical breast exam, mammography, pelvic exam, and Pap smear. (Section 1503(a)(2)(A) and (B).)

b. Screening services should be made available according to the following guidelines:

Breast Health:

(1) The most important risk factors for breast cancer are being female and older age. Programs should place emphasis on screening women 50 years and older. Specific screening guidelines that outline age eligibility are provided in the Official Program Guidelines Age Eligibility for Mammography Screening (included in the application kit). Eligible women can receive an annual clinical breast examination and screening mammogram.

The following exceptions apply:

(a) Women who have an abnormal clinical breast exam may be referred for a physician consultation, diagnostic mammogram and/or other diagnostic procedures reimbursed by the program (see ''(b)'' below).

(b) Among asymptomatic women ages 40–49 who are screened for the first time by the program, priority should be given to those who have a personal history of breast cancer or a first-degree relative with pre-menopausal breast cancer.

(2) For diagnostic services following an abnormal screening result, cooperative agreement funds may be expended for additional mammogram views, fine-needle aspiration, ultrasound, and office visits for evaluation of abnormal clinical breast examinations.

a. Provide priority for screening, referral, tracking, and follow-up services to women who are uninsured or under-insured. (Section 1504(a) of the PHS Act, as amended.)

An award may not be made under this announcement unless the State/territory/tribe involved agrees to give priority to the provision of screening, follow-up, and referral services to women who are underserved and low-income.

b. Establish breast and cervical cancer screening services throughout the State/territory/tribe. (Section 1504(c)(1) of the PHS Act, as amended.)

Funds may not be awarded under this announcement, unless the State/territory/tribe involved agrees that services and activities will be made available throughout the State/territory/tribe, including availability to members of any Indian tribe or tribal organization (as such terms are defined in Section 4 of the Indian Self-Determination and Education Assistance Act).

c. Provide allowances for items and services reimbursed under other programs. (Section 1504(d)(1) and (2) of the PHS Act, as amended.)

Funds may not be awarded under this announcement, unless the State/territory/ tribe involved agrees that funds will not be expended to make payment for any item or service that will be paid or can reasonably be expected to be paid by:

(1) Any State/territory/tribe compensation program, insurance policy, or Federal or State/territory/tribe health benefits program.

(2) An entity that provides health services on a prepaid basis.

d. Establish a schedule of fees/charges for services. (Section 1504(b)(1), (2), and (3) of the PHS Act, as amended.)

Funds may not be awarded under this announcement unless the State/territory/tribe involved agrees that if charges are to be imposed for the provision of services or program activities, the fees/charges for allowable screening and follow-up services will be:

(1) Made according to a schedule of fees that is made available to the public. (Section 1504(b)(1) of the PHS Act, as amended.)

(2) Adjusted to reflect the income of the woman screened. (Section 1504(b)(2) of the PHS Act, as amended.)

(3) Totally waived for any woman with an income of less than 100 percent of the official poverty line as established by the Director of the Office of Management and Budget and revised by the Secretary of the Department of Health and Human Services in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981. (Section 1504(b)(3) of the PHS Act, as amended.)

Additionally, the schedule of fees/charges should not exceed the maximum allowable charges established by the Medicare Program administered by the Health Care Financing Administration (HCFA). Fee/charge schedules should be developed in accordance with guidelines described in the interim final rule (42 CFR parts 405 and 534) which implements Section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) which provides limited coverage for screening mammography services.

Cervical Health:

(1) Women who are 18 years and older, with an intact cervix, are eligible for an annual Pap test and pelvic examination. While the incidence of precancerous lesions and cancer are higher among younger women, older women have higher mortality rates and are less likely to be screened regularly. Hence, programs should provide a balanced distribution in the ages of women receiving Pap tests.

The following exceptions apply:

(a) After a woman has had three consecutive, normal, annual examinations, the Pap test may be performed less frequently at the discretion of her health care provider.

(b) Women who have had a total hysterectomy that was performed for cervical neoplasia are eligible to receive Pap screening.

(2) For diagnostic services following an abnormal screening result, cooperative agreement funds may be expended for colposcopy and colposcopy-directed biopsy.

2. Provide appropriate referrals for medical treatment of women screened in the program and ensure, to the extent practicable, the provision of appropriate diagnostic and treatment services. (Section 1501(a)(2) of the PHS Act, as amended.)

A system for providing the appropriate diagnostic and treatment services for women whose screening test results are abnormal or suspicious is an essential component of any comprehensive breast and cervical cancer early detection program. Priority for diagnostic services should be given to women participating in the screening program who have abnormal screening results. The operational plan and budget for diagnostic services should reflect the projected number of women to be

screened by the program annually and the estimated number of abnormal screening exams expected.

a. Establish and maintain a system for the timely and appropriate referral and follow-up of women with abnormal or suspicious screening tests.

Referral systems should include the regular updating of information on local resources available in the community to which health care providers can refer women for additional diagnostic procedures not paid for by the program, as well as treatment services. Health care providers should assist clients in need of treatment services in obtaining eligibility for public-supported third party reimbursement programs.

b. Develop and implement a tracking system for women screened in the breast and cervical cancer early detection program. (Section 1501(a)(6) of the PHS Act, as amended.)

Tracking the women screened is essential to ensure that those who have abnormal results receive appropriate and timely follow-up for repeat screening, diagnostic procedures, and treatment. Tracking also includes reminders and outreach to women with normal results to return for timely rescreening. A useful tracking system is one that can be effectively integrated into the State/territory/tribe health care delivery system. The tracking system should provide women with a unique identification number to document the outcome of individual screening tests, regardless of the screening cycle or site. It should also provide information on needed follow-up. Confidentiality must be assured.

To meet the intent of Pub. L. 101–354 in ensuring the appropriate follow-up of women with abnormal screening results, the State/territory/tribe tracking system must include information on screening location (e.g., county, city), demographic characteristics (e.g., race, date of birth), and screening procedures and results (e.g., mammography, Pap tests) for all women in the program. For women identified with abnormal screening results, information on diagnostic procedures (e.g., colposcopy) and diagnoses, treatment (e.g., date initiated), and stages of disease must be included.

In collaboration with CDC, States/territories/tribes with currently funded comprehensive programs have compiled a list of some of the information necessary to ensure the appropriate follow-up of women. This list is available for the use of States, territories, and tribes awarded new funding under this announcement.

3. Develop and disseminate public information, education and outreach programs for the early detection and control of breast and cervical cancer. (Section 1501 (a)(3) of the PHS Act, as amended.)

Public information, education, and outreach include the systematic design and sustained delivery of clear and consistent health messages to women using a variety of methods and strategies that contribute to the early detection of breast and cervical cancer. Successful public education and outreach programs are those that increase women's knowledge, and ultimately have an impact on attitudes and screening behavior.

Public education and outreach activities should increase the number of women screened especially those who are identified as priority populations as defined in the ''Purpose'' section. State/territory/tribe and local programs should clearly demonstrate, through evaluation, the relationship of public education and outreach strategies to the number of women screened through the program.

4. Improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer. (Section 1501(a)(4) of the PHS Act, as amended.)

Health care providers (including, but not limited to, primary care physicians, radiologists, cytopathologists, surgeons, gynecologists, nurse practitioners, physician's assistants, registered nurses, radiologic technologists, health educators, and outreach workers) play a key role in assuring that women are screened at appropriate intervals, that screening tests are performed optimally, and that women with abnormal test results receive timely and appropriate diagnostic follow-up and treatment. Professional education strategies can be focused in two directions. One direction could provide direct educational opportunities to those health care professionals who provide breast and cervical cancer screening. A second focus is to develop clinical systems of practice that promote ongoing appropriate screening.

5. Establish mechanisms through which the State/territory/tribe can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures. (Section 1501(a)(5) of the PHS Act, as amended.)

Cooperative agreement funds may not be awarded (under Section 1501 of the PHS Act, as amended, Pub. L. 101–354) unless the State/territory/tribe involved agrees to assure the implementation of quality assurance procedures for mammography and cervical cytology. (Section 1503(c) and (d) of the PHS Act, as amended.)

a. Develop and implement a quality assurance system for breast cancer screening. The mammography services provided to women screened in the program must be conducted in accordance with the following guidelines issued by the Secretary of the Department of Health and Human Services. (Section 1503(e) of the PHS Act, as amended):

(1) All facilities conducting mammography screening procedures funded by the program must meet the requirements for mammography quality assurance developed by the Food and Drug Administration (FDA).

(2) Radiologists participating in the program will record their findings using the second edition American College of Radiology (ACR) Breast Imaging Reporting and Data System (BI–RADS). The BI–RADS' reporting categories are as follows:

(1) Negative; (2) Benign finding; (3) Probably benign finding—short interval follow-up suggested; (4) Suspicious finding; (5) Highly suggestive of malignancy; (6) Assessment incomplete.

(3) A report of the results of a mammogram performed through this program will be placed in a woman's permanent medical records that are maintained by her health care provider.

b. Develop and implement a quality assurance system for cervical cancer screening. The laboratory services provided to women for cytological screening must be conducted in accordance with the following guidelines issued by the Secretary of the Department of Health and Human Services. (Section 1503(e) of the PHS Act, as amended):

(1) Facilities will meet the standards and regulations promulgated by the Health Care Financing Administration (HCFA) under the Clinical Laboratory Improvement Act (CLIA) of 1988.

(2) All cervical cytology interpretation is required to be done on the premises of a qualified laboratory.

(3) A report of the results of a Pap test performed through this program will be placed in the woman's permanent medical records that are maintained by her health care provider.

(4) Pathologists participating in the program will record their Pap test findings using the Bethesda System which specifies specimen adequacy and incorporates these categories:

(1) Within Normal Limits; (2) Infection/Inflammation/Reactive Changes; (3) Atypical squamous cells; (4) Low Grade Squamous Intra epithelial Neoplasia (SIL); (5) High Grade SIL; (6) Squamous Cell Carcinoma; (7) Other.

6. Establish mechanisms which enhance the State/territory/tribe cancer surveillance system (i.e., the Central Cancer Registry and other databases) and facilitate program planning and evaluation. (Section 1501(a)(5)) of the PHS Act, as amended.)

Monitoring the distribution and determinants of breast and cervical cancer incidence and mortality is necessary to effectively plan, implement, and evaluate a comprehensive early detection program. Linkages with, and in some cases enhancements of, State/territory/tribe vital statistics, the Central Cancer Registry, the Behavioral Risk Factor Surveillance System and other State/territory/tribe and local surveys are needed to evaluate the status of program process (i.e., management, professional education, public education and outreach), impact (i.e., changes in participant screening behavior or screening practices of providers) and outcome (i.e., State/territory/tribe program screening data, cancer staging, morbidity, mortality).

a. To do this, surveillance systems should be established or enhanced which will:

(1) Collect State/territory/tribal population-based information on the demographics, incidence, staging at diagnosis, and mortality from breast and cervical cancer.

(2) Identify segments of the population at higher risk for disease and for the failure to be screened.

(3) Identify factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services.

(4) Monitor the number and characteristics of women screened in the program and the outcome of screening by analyzing data from the State/territory/tribe tracking system.

(5) Monitor screening resources, including the number of available mammography facilities, cytology laboratories, and providers of cervical cancer screening.

(6) When appropriate, develop linkages between the above-mentioned data bases.

b. Measuring the effectiveness of program activities to modify the screening behavior of women (impact evaluation) and on morbidity and mortality (outcome evaluation) is important for the identification of successful intervention strategies for the early detection of breast and cervical cancer. Equally important is process evaluation or the assessment of factors that contributed to the successful or unsuccessful establishment and implementation of program activities.

The design of each program component should ensure that there can be meaningful process, impact, and outcome evaluation. The evaluation plan should assess the implementation and effectiveness of each program component. At a minimum, the evaluation plan should identify those program activities that will be evaluated, the process, impact, and outcome indicators to be measured, how they will be measured, the proposed program time-lines, and resources needed. Activities could include:

(1) An inventory of specific services provided and a systematic description of the infrastructure developed with cooperative agreement funds;

(2) A description of the women who received services, including the number of women and demographic information such as age, race and ethnicity;

(3) An assessment of the referral system including the number of women referred for diagnostic and treatment services, number who received these services, and the capacity of the system to identify community resources to assist women in obtaining access to available services;

(4) An assessment of the availability and accessibility of breast and cervical cancer screening services and an estimation of the number of uninsured women by age and racial/ethnic distribution in the State/territory/tribe to be served by the program;

(5) An assessment of the planning, development, implementation, and accomplishment of program activities (e.g., goals, objectives, time lines, recruiting, hiring, and retaining staff; training staff; establishing and maintaining contracts with provider agencies, and assuring the quality of contractor performance);

(6) An assessment of changes in participant and provider knowledge, attitudes, behaviors, and practices related to screening for breast and cervical cancer;

(7) An assessment of the quality of screening tests provided by the program.

7. Ensure the coordination of services and program activities with other similar programs and establish a broad-based council to advise and support the program. (Section 1504(e) of the PHS Act, as amended.)

Coordination with other similar programs maximizes the availability of services and program activities, promotes consistency in screening procedures and educational messages, and reduces duplication. An award may not be made under this program announcement unless the State/territory/tribe agrees that the services and activities provided in this program are coordinated with other Federal, State/territory/tribe, and local breast and cervical cancer early detection programs through the development of collaborative partnerships. (Section 1504(e) of the PHS Act, as amended.)

The success of a comprehensive breast and cervical cancer early detection program is improved by broad-based support in the community and active public and private sector involvement. Partnership development with a broad range of stakeholders, including consumers, brings valuable knowledge, skills, and financial resources to the program, and provides access to, and information about, populations of women who have been missed by traditional screening systems.

Linkages should be established with federally funded programs such as the Regional Offices of the National Cancer Institute/Cancer Information Service (NCI/CIS), the Health Resources and Services Administration (HRSA) community/migrant health centers, Title X Family Planning programs, State Offices for Aging and Minority Health, the Indian Health Service (IHS) and the Medicare Program of the Health Care Financing Administration (HCFA).

Linkages and active collaboration are strongly encouraged with private sector organizations such as the American Cancer Society (ACS), the Young Women's Christian Association (YWCA), the Susan G. Komen Breast Cancer Foundation, the National Breast Cancer Coalition (NBCC), the National Alliance of Breast Cancer Organizations (NABCO), the American Association of Retired Persons (AARP), professional organizations, private physicians, survivors of breast and cervical cancer, local women's support groups, community leaders, managed care organizations, and other agencies and businesses in the community that provide health care and related support services to women.

8. Develop an operational and management plan for the implementation of a comprehensive breast and cervical cancer screening program.

The success of a comprehensive breast and cervical cancer early detection program is increased by the existence of a comprehensive, integrated, and realistic plan to address these diseases among all women, with emphasis given to women identified as priority populations under the ''Purpose'' section. All program components of the comprehensive program should be addressed.

A comprehensive breast and cervical cancer screening operational plan should relate to the State/territory/tribe Year 2000 Objectives and to the State/territory/tribe Cancer Control Plan. The operational and management plan should also reflect the development of qualified and diverse technical, program, and administrative staff, appropriate organizational relationships including lines of authority, adequate internal and external communication systems, and a system for sound fiscal management.

9. Representation or attendance at CDC sponsored trainings, meetings, site visits, and conferences.

B. CDC Activities

1. Convene a workshop of the funded programs every one to two years for information-sharing and problem-solving and hold a Program Director's meeting twice a year.

2. Provide funded States/territories/tribes with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the comprehensive program as described under Recipient Activities above. Consultation and technical assistance will be provided in the following areas:

a. Interpretation of current scientific literature related to the early detection of breast and cervical cancer;

b. Practical application of Pub. L. 101–354, including amendments to the law;

c. Nationally recognized clinical and quality assurance guidelines for the assessment and diagnosis of breast and cervical cancer;

d. Design and implementation of each program component (screening, referral, tracking, and follow-up; public education and outreach; professional education; collaborative partnerships; quality assurance; surveillance; and evaluation);

e. Evaluation of each program component (process, impact, and outcome) through the analysis and interpretation of program outcomes, screening data, and surveillance data;

f. Overall operational planning and program management.

3. Provide two training opportunities and a video teleconference with self-study educational packets on selected topics to State, territorial, and tribal program staff through the National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control's (DCPC's) National Training Center.

4. Conduct site visits to assess program progress and mutually resolve problems, as needed, and/or coordinate reverse site visits to CDC in Atlanta, GA.

5. At the request of the applicant, and if available, assign Federal personnel to a project in lieu of a portion of the financial assistance. (Section 1507(b) of the PHS Act, as amended.)

Technical Reporting Requirements

Semiannual progress reports are required and must be submitted no later than 30 days after each semiannual reporting period. The semiannual progress reports must summarize the following: (1) Major accomplishments including information on women screened; (2) problems encountered in program implementation; and (3) efforts or proposed strategies to resolve problems. The final progress report is required no later than 90 days after the end of the project period. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement will be submitted with the progress reports.

An annual financial status report (FSR) must be submitted no later than 90 days after the end of each budget period. The final financial status report is due no later than 90 days after the end of the project period.

An original and two copies of all reports should be submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

All applicants must develop their applications in accordance with information contained in this program announcement and the instructions below. Applications should not exceed 100 pages including budget and justification; this does not include appendices.

1. Executive Summary

The applicant should provide a clear, concise one or two page written summary to include: (1) The need for the program; (2) the major objectives and activities of the proposed comprehensive breast and cervical cancer early detection program; (3) the requested amount of Federal funding; and (4) capability to implement the program.

2. Background and Need

The applicant should describe:

a. The disease burden by age and race/ethnicity: (1) The State/territory/tribe breast and cervical cancer age-adjusted mortality rates averaged over five years and their ranking nationally, (2) the incidence rates for these diseases (where available);

b. Total number of women in the State/territory/ tribe, including those women who are uninsured, by age and racial/ethnic distribution;

c. Unmet screening and rescreening needs of uninsured and underinsured women (where available);

d. Barriers to early detection screening services;

e. State/territory/tribe's relevant experiences in the development and implementation of a breast and cervical cancer early detection program.

3. Implementation Plan

The applicant should:

a. Propose measurable, time-phased, and realistic objectives for: (1) The overall program, and (2) specific program components as described under the ''Recipient Activities'' section, including a projection of the number of women to be screened by age, racial and ethnic groups, and areas or locality in the State/territory/tribe. (Section 1505(2) of the PHS Act, as amended.)

b. Describe the State/territory/tribe's: (1) Health care delivery system; (2) proposed State/ territorial/tribal screening system; (3) proposed follow-up and referral system for women requiring diagnostic procedures and medical treatment not provided by the program; and (4) proposed tracking system for women screened and rescreened by the program. (Section 1501(a) (1) and (2) of the PHS Act, as amended.)

c. Proposed specific outreach strategies to reach women who are identified as priority populations as defined under the ''Purpose'' section. (Section 1504 (a) of the PHS Act, as amended.)

d. Document available resources in the State/territory/tribe for the payment or reimbursement of breast and cervical cancer screening, including the Medicaid Program. [Section 1504 (d) of the PHS Act, as amended.]

e. Describe, in detail, the current or proposed: (1) Professional education; (2) public education and outreach activities; and (3) and surveillance activities for breast and cervical control. (Section 1501(a)(3), (4), (5), and (6) of the PHS Act, as amended.) Information provided should include program objectives, proposed activities and evaluation.

f. Describe the ability to establish a screening program that meets FDA regulations for mammography screening; uses the American College of Radiology Breast Imaging Reporting and Data System (BI-RADS); and meet the standards and regulations of the Clinical Laboratory Improvement Act (CLIA) for cervical cancer screening.

g. Provide a projected timetable for program implementation that displays

dates for the accomplishment of specific proposed activities.

h. Describe process and outcome evaluation strategies for each program component, including how the information will be used to plan, develop, and manage the program on an ongoing basis. (Section 1501 (a)(6) of the PHS Act, as amended.)

i. Describe how the State/territory/tribe will assure that funds will be used in a cost-effective manner. (Section 1505 (4) of the PHS Act, as amended.)

4. Collaborative Partnership and Community Involvement

The applicant should describe:

a. How the program will develop linkages and coordinate with other Federal, State, and local programs, voluntary and professional organizations, private physicians, and mammography facilities and other groups, agencies, and businesses in the community that provide health care and related support services to women. (Section 1504(e) of the PHS Act, as amended.)

b. The current or proposed broad-based council that will advise and support the breast and cervical cancer early detection program, including the identification of current members or proposed representatives, their charge, and their proposed roles and responsibilities. Specific subcommittees of the council should be described (e.g., clinical services, public education and outreach, and professional education).

5. Management and Organizational Structure

The applicant should submit a description of the structure to ensure the implementation of a breast and cervical cancer program that describes the development of qualified and diverse technical, program, and administrative staff, organizational relationships including lines of authority, internal and external communication systems, and a system for sound fiscal management. The information should also include the following:

a. Provide a copy of the organizational chart indicating the placement of the proposed program in the department/organization.

b. Document available resources in the State/territory/tribe for the payment or reimbursement of breast and cervical cancer screening, including the Medicaid and Medicare Programs. (Section 1504 (d) of the PHS Act, as amended.)

c. Submit the proposed schedule of fees and charges for breast and cervical cancer screening and diagnostic services, consistent with maximum Medicare reimbursement rates, and include a description of its use in the program. In States/territories/tribes where there are multiple Medicare rates and a single reimbursement rate is being proposed, the applicant must provide justification for approval. (Section 1504 (b) of the PHS Act, as amended.)

d. Letters of support (dated within the last three months) from key partners, participants, and community leaders should be included in the application.

6. Capability for Program Implementation

The applicant should describe proposed activities as measured by:

(a) Accomplishments of an existing breast and cervical cancer early detection program funded by CDC or relevant past experiences funded by other sources:

(1) States Currently Receiving CDC Comprehensive Funds:

Accomplishments in establishing a comprehensive breast and cervical cancer early detection program, including the total number, age and racial/ethnic distribution of women screened; percent of abnormal findings by age and race/ethnicity; rate of cancers identified by age; follow-up time between screening and diagnosis and between diagnosis and treatment initiation; and, percent of women who are routinely rescreened by the program.

Accomplishments in establishing an infrastructure to support a breast and cervical cancer screening program and in resolving program challenges, such as mammography screening for women 50 years and older, the timely follow-up of women with abnormal screening and diagnostic results, or the use of the ACR Lexicon final reporting categories by radiologists to report mammogram results.

(2) Territories/Tribes Currently Receiving CDC Capacity Building Funds:

Accomplishments in establishing a comprehensive infrastructure to support a breast and cervical cancer screening program including screening, referral, tracking, and follow-up, public education and outreach, professional education, quality assurance, surveillance, and partnership activities.

(3) Territories/Tribes Not Currently Receiving CDC Breast and Cervical Cancer Funds:

Relevant past experiences of the applicant in conducting screening, referral, tracking, and follow-up, public education and outreach, professional education, quality assurance, surveillance, partnership activities for cancer control, chronic disease control or other relevant areas.

7. Source Data for Matching Requirement

Identify and describe:

a. Maintenance of Effort (MOE)—The average amount of non-Federal dollars expended for breast and cervical cancer programs and activities made by a State/territory/tribe for the two year period preceding the first Federal fiscal year of the program funding for breast and cervical cancer early detection activities. This amount will be used to establish the maintenance of effort baseline for current and future match requirements;

b. State/territory/tribe allowable sources of matching funds for the program and the estimated amounts from each;

c. Procedures for documenting the value of non-cash matching funds;

d. Procedures for documenting the actual amount of match received.

8. Budget with Justification

Provide a detailed budget request and complete line item justification (for both Federal and non-Federal funds) of all proposed operating expenses consistent with the program activities described in this announcement. Not less than 60 percent of Federal funds will be expended for screening, tracking, and follow-up services. Not more than 10 percent of Federal funds will be expended for administrative expenses.

The applicant should submit a chart showing the expected funding levels and the number of women to be screened by mammography and Pap tests by contract, county, or locality in the State/territory/tribe.

Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (5 points)

The extent of the disease burden and the need among the priority populations as measured by:

(a) The State/territorial/tribal breast and cervical cancer age-adjusted mortality rates averaged more than five years and ranking nationally;

(b) The disease burden, including the incidence rates of breast and cervical cancer by age, race and ethnicity (where available);

(c) The number of uninsured women by race/ethnicity who are 18–49 years, 50–64 years, and the number of women eligible for Medicare;

(d) The unmet screening needs of uninsured and under-insured women;

(e) Existing access and barriers to early detection services, (e.g., social, financial, geographic).

2. Implementation Plan (60 points)

The degree of comprehensiveness and quality of the Operational Plan in relation to:

a. The number of women projected for screening, quality of screening, re-screening, and surveillance programs, and compliance with Federal requirements (i.e., screening guidelines, FDA mammography certification requirements, BI-RAD reporting, and CLIA regulations). (20 Points).

b. The extent to which proposed public education activities appear likely to increase the number of women screened, especially women identified in priority populations (see ''Purpose'). (15 Points)

c. The extent to which proposed professional education activities provide training options and educational opportunities to improve the quality of care of women. (15 Points)

d. The extent to which proposed surveillance and evaluation appears to use reliable data and program results to measure program effectiveness and to facilitate program planning, development, and implementation, and to enhance program goals and objectives. (10 Points)

3. Collaborative Partnerships and Community Involvement (15 points)

The feasibility and extent of the applicant's proposal to develop collaborative partnerships with other Federal, State and local programs, territories, tribes and voluntary, professional, and private-sector agencies, and to establish and maintain a broad-based council of partners at State, territory, tribe and local levels.

4. Management and Organizational Structure (10 points)

The feasibility and appropriateness of the applicant's management plan that describes the development of qualified and diverse technical, program, and administrative staff, organizational relationships including lines of authority, internal and external communication systems, and a system for sound fiscal management.

5. Capability for Program Implementation (10 points)

The extent to which the applicant appears likely to be successful in implementing the proposed activities as measured by:

a. Accomplishments by comprehensive-funded States in implementing a breast and cervical cancer early detection program as required through previous funding agreements.

b. Accomplishments by capacity-funded States in establishing a comprehensive public health infrastructure to support a breast and cervical cancer early detection program.

c. Relevant past experiences of unfunded applicants in conducting breast and cervical cancer early detection programs.

6. Budget and Justification (Not Weighted)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement.

Non-competing Continuation Application Content

In compliance with 45 CFR 74.51(d) and 92.10(b)(4), as applicable, non-competing continuation applications submitted within the project period need only include:

A. A brief progress report describing the accomplishments of the previous budget period.

B. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, etc.) not included in the 01 Year application.

C. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items. Supporting justification should be provided where appropriate.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This order sets up a system for State/territory/tribe and local review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to expected announcements of cooperative agreement funds and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each State. A current list of SPOCs is included in the application kit. Indian territories are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations or if SPOCs have any State process recommendations on applications submitted to CDC, they should reference this Announcement Number 718 and forward recommendations to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' the State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Paperwork Reduction Act

Projects which involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 (OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–18, Atlanta, GA 30305 on or before May 9, 1997.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

a. Received on or before the stated deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b., above, are considered late applications. Late applications will not be considered in the current

competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number. Please refer to Announcement #718. You will receive a complete program description, information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6801, fax (404) 842–6513. Programmatic technical assistance may be obtained from Kevin Brady, MPH, Assistant Branch Chief, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724, telephone (404) 488–4343, fax (404) 488–4727. You may also obtain this announcement, and other CDC announcements, from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or the Government Printing Office homepage (including free on-line access to the Federal Register at http://www.access.gpo.gov).

Please refer to Announcement Number 718 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''Introduction'' section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: March 5, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5956 Filed 3–10–97; 8:45 am]

BILLING CODE 4163–18–P

Current Status of the Vessel Sanitation Program and Experience to Date With Program Operations—Public Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Current Status of the Vessel Sanitation Program (VSP) and Experience to Date with Program Operations—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9 a.m.–12 noon, Thursday, April 3, 1997.

Place: Port of Miami, Terminal #10, Miami, Florida 33132. For directions call 305/536–4307, or fax 305/536–4528.

Status: Open to the public for participation, comment, and observation, limited only by the space available. The meeting room accommodates approximately 400 people.

Purpose: To discuss current status of the VSP and experience to date with program operations.

Matters to be Discussed: During the past 10 years, as part of the revised VSP, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is a continuation of that series of public meetings. Some of the topics to be discussed at this meeting include the finalization of CDC's ''Final Recommended Shipbuilding Construction Guidelines for Cruise Vessels Destined to Call on U.S. Ports,'' the finalization of ''Interim Recommendations to Minimize Transmission of Legionnaires' Disease from Whirlpool Spas on Cruise Ships,'' revising the current VSP Operations Manual, status of development of a VSP Hazard Analysis Critical Control Point training seminar and future plans for program direction.

For a period of 15 days following the meeting, through April 18, 1997, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dan Harper, Program Manager, VSP, Special Programs Group (F29), NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 770/488–3524.

Dated: March 5, 1997.

Carolyn J. Russell

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 97–5960 Filed 3–10–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements or the Low Income Home Energy Assistance Program (LIHEAP) and Detailed Model Plan (submitted every 3 years. Abbreviated applications to be submitted in intervening years.)

OMB No.: 0970–0075.

Description: This information requirement is an annual activity which is required by law for the receipt of federal block grant funds under the LIHEAP statute. By law, we must make this model plan available to grantees. It provides grantees an optional management tool that may alleviate the burden of preparing additional information to complete plans. The detailed mode plan is to be filed only once every three years or sooner if major changes are made to grantee's program. We are also seeking approval for a streamlined application to be used in alternate years.

Respondents: State, Territories and Tribal Govts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed model plan	65	1	1	65
Abb. model plan	115	1	.33	38

Estimated Total Annual Burden Hours: 103.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Service, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: March 5, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–6000 Filed 3–10–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93N–0190]

Padam C. Bansal; Grant of Special Termination; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) granting special termination of the debarment of Dr. Padam C. Bansal, 9 Powelson Lane, Bridgewater, NJ 08807. FDA bases this order on a finding that Dr. Bansal has provided substantial assistance in the investigations or prosecutions of offenses relating to a matter under FDA's jurisdiction, and that special termination of Dr. Bansal's debarment serves the interest of justice and does not threaten the integrity of the drug approval process.

EFFECTIVE DATE: March 11, 1997.

ADDRESSES: Comments should reference Docket No. 93N–0190 and be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane Sullivan-Ford, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 29, 1993 (58 FR 62674), Dr. Padam C. Bansal, the former Director of Research and Development at Par Pharmaceutical, Inc. (Par), was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(ii), and 321(dd)). The debarment was based on FDA's finding that Dr. Bansal was convicted of a felony under Federal law for conduct relating to the development or approval of any drug product, or otherwise relating to the regulation of a drug product (section 306(a)(2) of the act). On December 29, 1993, Dr. Bansal applied for special termination of debarment, under section 306(d)(4) of the act, as amended by the Generic Drug Enforcement Act.

Under section 306(d)(4)(C) and (D) of the act, FDA may limit the period of debarment of a permanently debarred individual if the agency finds that: (1) The debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in subsections (a) or (b) of section 306 of the act or relating to a matter under FDA's jurisdiction; (2) termination of the debarment serves the interest of justice; and (3) termination of the debarment does not threaten the integrity of the drug approval process. Special termination of debarment is discretionary with FDA.

FDA considers a determination by the Department of Justice concerning the substantial assistance of a debarred individual conclusive in most cases. Dr. Bansal fully cooperated with the Department of Justice investigations and prosecutions of others within Par, as substantiated by two letters received by FDA from the Maryland U.S. Attorney's Office. Accordingly, FDA finds that Dr. Bansal provided substantial assistance as required by section 306(d)(4)(C) of the act.

The additional requisite showings, i.e., that termination of debarment serves the interest of justice and poses no threat to the integrity of the drug approval process, are difficult standards to satisfy. In determining whether these have been met, the agency weighs the significance of all favorable and unfavorable factors in light of the remedial, public health-related purposes underlying debarment. Termination of debarment will not be granted unless, weighing all favorable and unfavorable information, there is a high level of assurance that the conduct that formed the basis for the debarment has not recurred and will not recur, and that the individual will not otherwise pose a threat to the integrity of the drug approval process.

Based on a thorough analysis of the available evidence, Dr. Padam C. Bansal has demonstrated that termination of his debarment serves the interest of justice and will not pose a threat to the integrity of the drug approval process.

Under section 306(d)(4)(D) of the act, the period of debarment of an individual who qualifies for special termination may be limited to less than permanent but to no less than 1 year. Dr. Bansal's period of debarment has lasted more than 1 year. Accordingly, the Deputy Commissioner for Operations, under section 306(d)(4) of the act and under authority delegated to him (21 CFR 5.20), finds that Dr. Padam C. Bansal's application for special termination of debarment should be granted, and that the period of debarment should terminate immediately, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. The Deputy Commissioner for Operations further finds that because the agency is granting Dr. Bansal's application, an informal hearing under section 306(d)(4)(C) of the act is unnecessary.

As a result of the foregoing findings, Dr. Padam C. Bansal's debarment is terminated, effective (*insert date of publication in the* Federal Register) (section 306(d)(4)(C) and (D) of the act).

Dated: February 27, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–5964 Filed 3–10–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0252]

Atul Shah; Grant of Special Termination; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order under the Federal Food, Drug, and Cosmetic Act (the act) granting special termination of the debarment of Dr. Atul Shah, 20 Hampton Hollow Dr., Perrineville, NJ 08535. FDA bases this order on a finding that Dr. Shah has

provided substantial assistance in the investigations or prosecutions of offenses relating to a matter under FDA's jurisdiction, and that special termination of Dr. Shah's debarment serves the interest of justice and does not threaten the integrity of the drug approval process.

EFFECTIVE DATE: March 11, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Diane Sullivan-Ford, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a Federal Register notice dated December 5, 1994 (59 FR 62399), Dr. Atul Shah, the former Director of Analytical Research and Development at Par Pharmaceutical, Inc. (Par), was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd)). The debarment was based on FDA's finding that Dr. Shah was convicted of a felony under Federal law for conduct relating to the development, or approval of any drug product, or otherwise relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)). On March 30, 1995, Dr. Shah applied for special termination of debarment, under section 306(d)(4) of the act (21 U.S.C. 335a(d)(4)), as amended by the Generic Drug Enforcement Act.

Under section 306(d)(4)(C) and (d)(4)(D) of the act, FDA may limit the period of debarment of a permanently debarred individual if the agency finds that: (1) The debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in section 306(a) or (b) of the act or relating to a matter under FDA's jurisdiction; (2) termination of the debarment serves the interest of justice; and (3) termination of the debarment does not threaten the integrity of the drug approval process. Special termination of Dr. Shah's debarment is discretionary with FDA.

FDA considers a determination by the Department of Justice concerning the substantial assistance of a debarred individual conclusive in most cases. At Dr. Shah's sentencing, the Assistant U.S. Attorney prosecuting Dr. Shah, recommended a reduced sentence based on Dr. Shah's ''substantial assistance'' to the Government in its investigation. Accordingly, FDA finds that Dr. Shah provided substantial assistance as required by section 306(d)(4)(C) of the act.

The additional requisite showings, i.e., that termination of debarment serves the interest of justice and poses no threat to the integrity of the drug approval process, are difficult standards to satisfy. In determining whether these have been met, the agency weighs the significance of all favorable and unfavorable factors in light of the remedial, public health-related purposes underlying debarment. Termination of debarment will not be granted unless, weighing all favorable and unfavorable information, there is a high level of assurance that the conduct that formed the basis for the debarment has not recurred and will not recur, and that the individual will not otherwise pose a threat to the integrity of the drug approval process.

Based on a thorough analysis of the available evidence, Dr. Atul Shah has demonstrated that termination of his debarment serves the interest of justice and will not pose a threat to the integrity of the drug approval process.

Under section 306(d)(4)(D) of the act, the period of debarment of an individual who qualifies for special termination may be limited to less than permanent but to no less than 1 year. Dr. Shah's period of debarment, which commenced on December 5, 1994, has lasted more than 1 year. Accordingly, the Deputy Commissioner for Operations, under section 306(d)(4) of the act and under authority delegated to him (21 CFR 5.20), finds that Dr. Atul Shah's application for special termination of debarment should be granted, and that the period of debarment should terminate immediately, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. The Deputy Commissioner for Operations further finds that because the agency is granting Dr. Shah's application, an informal hearing under section 306(d)(4)(C) of the act is unnecessary.

As a result of the foregoing findings, Dr. Atul Shah's debarment is terminated, effective (*insert date of publication in the* Federal Register) (21 U.S.C. 335a(d)(4)(C) and (d)(4)(D)).

Dated: February 27, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–6066 Filed 3–10–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA 668–B]

Agency Information Collection Activities: Proposed Collection; 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, is publishing the following summary of proposed collections for public comment. 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: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Post Laboratory Survey Questionnaire—Laboratory, and Supporting Regulation 42 CFR section 493; *Form No.:* HCFA 668–B; *Use:* This form will allow Laboratories to assess the CLIA survey process and report their satisfaction with the survey process. This information will help HCFA evaluate the survey process from the laboratory's prospective. *Frequency:* Biennially; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Govt.; *Number of Respondents:* 40,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 5,000.

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 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human

Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–25–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 3, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–5921 Filed 3–10–97; 8:45 am]

BILLING CODE 4120–03–P

[HCFA 3070 G–I]

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 currently approved collection; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions Survey Report Form and Supporting Regulations 42 CFR Sections 431, 435, 440, 442 and 483, Subpart I; *Form No.:* HCFA 3070 G–I; *Use:* The survey form and supporting regulations are needed to ensure provider compliance. In order to participate in the Medicaid program as an Intermediate Care Facility for the Mentally Retarded (ICF/MR), providers must meet Federal standards. The survey report form is used to record providers' compliance with the individual standard and report it to the Federal Government. *Frequency:* annually; *Affected Public:* Business or other for-profit, Not for-profit institutions, State, Local or Tribal Govt.; *Number of Respondents:* ,7200; *Total Annual Responses:* ,7200; *Total Annual Hours:* 21,600.

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 28, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–6063 Filed 3–10–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project

Consortia Development for Health Professions Training in Community-Based Settings—New—Consortia which include academic institutions and community-based providers have been proposed as one mechanism for improving collaboration between health professions schools and communities, enabling them to provide relevant educational experiences and facilitating meeting education and workforce goals. The consortia should be based on a formal association of academic health professions training schools or programs and community-based providers (e.g., community/migrant health centers, managed care organizations) involved, at least, in part, in the entry-level education and/or continuing education of health professionals. The purposes of this project are (1) to prepare an inventory of consortia for health professions education, (2) to examine the characteristics of successful consortia, and (3) to examine the role that consortia play in assisting health professions schools or programs to prepare health care providers for the evolving health care system.

An initial survey will be conducted by mail of consortia identified through informal conversations with key academic representatives, community-based providers, and other knowledgeable individuals, and a literature review. The initial survey will be used to gather information that generally describes the consortia, including their goals and accomplishments. Consortia respondents will also be asked to identify additional consortia that should receive the initial survey. From the information gathered in the initial survey, 20 consortia will be selected for additional study as models of successful consortia, based on criteria established by an advisory workgroup.

The second survey will consist of phone interviews with up to 20 of the consortia identified as successful models from the initial survey. These data will describe the characteristics of successful consortia in more detail (leadership, organizational models, missions and goals, financing arrangements, facilitating factors, and barriers). Data will also be collected to determine the role that consortia play in assisting health professional schools to prepare health care providers for the evolving health care system. The burden estimates are as follows:

Form name	No. of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Mail survey of consortia	200	1	200	.5	100
Telephone follow-up of successful models	20	1	20	2	40
Total	200	1.1	220	.64	140

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 5, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–5966 Filed 3–10–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Research Centers in Minority Institutions.

Date: March 26, 1997.

Time: 8:00 a.m.

Place: J.W. Marriott Hotel, The Dallas Room, 5150 Westheimer Road, Houston, TX 77056 (713) 961–1500.

Contact Person: Dr. John Lymangrover, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965 (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.389, Research Centers in Minority Institutions, National Institutes of Health, HHS.)

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6003 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: K–12.

Date: June 17–18, 1997.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, Montgomery Room, 8120 Wisconsin Avenue, Bethesda, MD 20814 (301) 652–2000.

Contact Person: Dr. Jill Carrington, Scientific Review Administrator, 6705 Rocklege Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965 (301) 435–0811.

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 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.339, Research Centers in Minority Institutions, National Institutes of Health, HHS.)

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6006 Filed 3–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; 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: Cytokine Regulation of the Host Response to Injury and Infection.

Date: March 24, 1997.

Time: 4:00 p.m.—until conclusion.

Place: Holiday Inn, North Campus, 3600 Plymouth Road, Ann Arbor, Michigan 48104.

Contact Person: Bruce K. Wetzel, Ph.D, Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS–19, Bethesda, MD 20892–6200, 301–594–3907.

Purpose: To review and evaluate program project applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. Applications and the discussions of these could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individual's 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: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6004 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: TB Research Materials and Vaccine Testing (Telephone Conference Call.)

Date: March 31, 1997.

Time: 2:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 1A4, Bethesda, MD 20892 (301) 496–2550.

Contact Person: Dr. Madelon Halula, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate contract proposals.

Name of SEP: International Training and Research in Emerging Infectious Diseases.

Date: May 13–14, 1997.

Time: 8:30 a.m.

Place: Ramada Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814 (301) 654–1000.

Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892 (301) 496–7042.

Purpose/Agenda: To evaluate grant applications.

These 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 Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6005 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 19, 1997.

Time: 10:00 a.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

Name of SEP: Mechanisms of Immunopathology in DHF/DSS (Telephone Conference Call).

Date: March 20, 1997.

Time: 10:00 a.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: April 3, 1997.

Time: 2:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

These 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 Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6007 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 27, 1997.

Time: 10:00 a.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 27, 1997.

Time: 1:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 27, 1997.

Time: 2:30 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

These 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 Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6008 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 24, 1997.

Time: 11:00 a.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 24, 1997.

Time: 1:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 24, 1997.

Time: 2:30 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

Name of SEP: Expanded Research on Emerging Diseases (Telephone Conference Call).

Date: March 24, 1997.

Time: 4:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892 (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

These 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 Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6009 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communications Disorders; Notice of Meeting

Notice is hereby given of the NIDCD/NASA/VA Hearing Aid Improvement Conference: Facilitating Partnerships for Technology Transfer, to be held 8:30 am to 5 pm, May 1–2, 1997, in Masur Auditorium, National Institutes of Health, 9000 Rockville Pike, Bethesda MD 20892.

To register for the meeting ($30 registration fee), please contact Daniel Winfield, Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709–2194, by phone at 919–541–6431, by fax at 919–541–6221, or by e-mail at winfield@rti.org.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Winfield in advance of the meeting.

Dated: March 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–6010 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: IL–13 Receptor Specific Chimeric Proteins and Uses Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), announces that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license in the field of therapeutics to treat cancer to NeoPharm, Inc. of Delaware to practice the inventions embodied in U.S. Patent Application 08/404,685 and corresponding foreign patent applications entitled ''IL–13 Receptor Specific Chimeric Proteins and Uses Thereof'' and E–266–94/1 entitled ''Compositions and Methods for Specifically Targeting Tumors.'' These inventions are owned by the Government of the United States of America as represented by the Department of Health and Human Services and the Pennsylvania State University.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

SUPPLEMENTARY INFORMATION: The patent application discloses the conjugation of human interleukin–13 (IL–13) to genetically engineered bacterial toxin—pseudomonas exotoxin (PE38QQR) molecule and its use as a diagnostic and therapeutic agent. The resulting chimeric toxin known as hIL13–PE38QQR binds only to cells expressing IL–13 receptors. Because of the chimerica molecule binds only to cells expressing the IL–13 receptor, i.e., tumor cells, the technology can be used to targets those cells. The improved specific targeting of this molecule, which is premised upon the discovery that tumor cells overexpress IL–13 receptors at extremely high levels, permits the use of lower dosages of chimeric molecules to deliver effector molecules to the targeted tumor cells. The targeting of this chimeric molecule has been improved by adding a blocker of the interleukin–4 receptor. This invention will be useful in the treatment of cancer. Specifically, the targeting method could be used in conjunction with current methods, e.g., chemotherapy, the kill tumor cells while maintaining healthy cells. To date, the molecule has been shown to be effective against a variety of solid tumor cancers, including adenocarcinoma, colon cancer, breast cancer, ovarian cancer, kidney cancer, brain cancer and AIDS-associated Karposi's sarcoma.

ADDRESSES: Request for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licences should be directed to: Jaconda Wagner, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7735 ext. 284; Facsimile: (301) 402-0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before May 12, 1997, will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act. 5 U.S.C. 552.

Dated: Feburary 28, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–6002 Filed 3–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 825126

Applicant: Elisa Grahm, Marina del Rey, California

The applicant requests a permit to take (harass by locating and monitoring nests) the California least tern (*Sterna albifrons browni*) at Venice Beach, Los Angeles County, California in conjunction with population studies for the purpose of enhancing its survival.

Permit No. 781384

Applicant: Thomas Leslie, Irvine, California

The applicant requests an amendment of his permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys and population monitoring in vernal pools throughout the range of these species in California for the purpose of enhancing their survival.

Permit No. 824123

Applicant: Mary B. Reents, San Luis Obispo, California

The applicant requests a permit to take (harass by survey, capture and release) the Morro shoulderband snail (= banded dune snail) (*Helminthoglyptoa walkeriana*) in San Luis Obispo County, California in conjunction with population studies for the purpose of enhancing its survival.

Permit No. 796284

Applicant: D. Christopher Rogers, Sacramento, California

The applicant requests a permit to take (harass by survey, capture and release) the Morro shoulderband snail (= banded dune snail) (*Helminthoglyptoa walkeriana*) in San Luis Obispo County, California in conjunction with presence or absence surveys and ecological studies for the purpose of enhancing its survival.

Permit No. 825275

Applicant: Daniel Anderson, Davis, California

The applicant requests a permit to take (capture, band, color-band, radio-tag, collect blood and feathers, and release; and salvage eggs and carcasses) the California brown pelican (*Pelecanus occidentalis californicus*) along the entire coast of California in conjunction with life history studies for the purpose of enhancing its survival.

Permit No. 808242

Applicant: Scott D. Cameron, San Diego, California

The applicant requests a permit to take (capture and release) the southwestern Arroyo toad (*Bufo microscaphus californicus*) in Ventura, Los Angeles, San Diego, Orange, Santa Barbara, Riverside, San Bernardino, San Luis Obispo, Monterey, Contra Costa, Alameda, and San Mateo Counties, California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 797259

KEA Environmental, 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 its survival.

Permit No. 825681

Essex Environmental, El Granada, California

The applicant requests a permit to take (harass by survey) the San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard (*Gambelia silus*) and to take (harass by survey; locate nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Luis Obispo and Santa Barbara Counties, California in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 825680

Applicant: Gary Santolo, Sacramento, California

The applicant requests a permit to take (capture and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) in San Diego County, California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 787924

Applicant: Marcus Spiegelberg, San Diego, California

The applicant requests an amendment of his permit to extend the area authorized to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) to include Orange County, California and to take (harass by locating and monitoring nests) the least Bell's vireo (*Vireo bellii pusillus*) to include Orange and Riverside Counties, California for the purpose of enhancing their survival in conjunction with conducting life history studies.

Permit No. 825679

Applicant: Tony Bomkamp, Anaheim, California

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys and population monitoring in vernal pools throughout the range of these species in California for the purpose of enhancing their survival.

Permit No. 825576

Applicant: Richard Neal Wales Jr.

The applicant requests a permit to take (harass by survey; capture and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), Arroyo southwestern toad (*Bufo microscaphus californicus*), and tidewater goby (*Eucyclogobias newberryi*) in Orange, Riverside, Los Angeles, San Bernardino, Ventura, and Santa Barbara Counties, California in conjunction with scientific research on co-occurring species for the purpose of enhancing their survival.

Permit No. 780566

Applicant: Ruben S. Ramirez, Jr., Diamond Bar, California

The applicant requests an amendment to his permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and Riverside fairy

shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys and population monitoring in vernal pools throughout the range of these species in California for the purpose of enhancing their survival.

Permit No. 825577

Applicant: Director of Public Works, Schofield Barracks, Hawaii

The applicant requests a permit to remove and reduce to possession specimens of the following plant species: *Alsinodendron trinerve* (plant, no common name); *Labordia cyrtandrae* (Ḳamakahala); *Delissea subcordata* (Òha); *Flueggea neowawraea* (Mehamehame); *Lobelia oahuensis* (plant, no common name); *Phyllostegia mollis* (plant, no common name); *Viola chamissoniana* ssp. *chamissoniana* (Pamakani); *Cyrtandra subumbellata* (Haìwale); *Viola oahuensis* (plant, no common name); *Sanicula purpurea* (plant, no common name); *Eragrostis fosbergii* (Fosberg's love grass); *Cyanea grimesiana* ssp.*obatae* (Haha); *Lycopodium nutans* (Wạwaeìole); *Solanum sandwicense* (Àieakeakua, popolo); *Stenogyne kanehoana* (plant, no common name); *Cyanea koolauensis* (Haha); *Schiedea nuttallii* var. *nuttallii* (plant, no comon name); *Alsinodendron obovatum* (plant, no common name); *Cyanea superba* (plant, no common name); *Sanicula mariversa* (plant, no common name); *Dubautia herstobatae* (Naènaè); *Hedyotis parvula* (plant, no common name); *Neraudia angulata* (plant, no common name); *Neraudia angulata* (plant, no common name); *Silene lanceolata* (plant, no common name); *Cenchrus agrimonioides* (Kamanomano (=Sandbur, agrimony); *Cyrtandra viridiflora* (Haìwale); *Melicope* (=*Pelea*) *lydgatei* (Alani); *Phyllostegia parviflora* (plant, no common name); *Pteris lidgatei* (plant, no common name); *Cyanea longiflora* (Haha); *Labordia cyrtandrae* (Kamakahala); *Asplenium fragile* var. *insulare* (plant, no common name); *Hedyotis coriacea* (Kioèle); *Neraudia ovata* (plant, no common name); *Silene lanceolata* (plant, no common name); *Solanum incompletum* (Popolo ku mai); *Tetramalopium arenarium* (plant, no common name); *Spermolepis hawaiiensis* (plant, no common name); and *Zanthoxylum hawaiiense* (Aè) in Kawailoa, Kahuku, and Pohakuloa Training Areas, Makua Military Reservation, and Schofield Barracks in Hawaii County, Hawaii in conjunction with scientific research for the purpose of enhancing their propagation and survival.

Permit No. 806723

Applicant: Brian L. Cypher, Bakersfield, California

The applicant requests an amendment to his permit to extend the area authorized to take (capture, ear-tag, measure, collect blood and ectoparasites, radio-tag, and release) the San Joaquin kit fox (*Vulpes macrotis mutica*) in T28S to T30S; R26E to R29E of the Mt. Diablo base meridian of Kern County, California in conjunction with ecological research for the purpose of enhancing its survival.

Permit No. 825572

Applicant: Jeff Dreier, San Rafael, California

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys and population monitoring in vernal pools throughout the range of these species in California for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received by April 10, 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: March 3, 1997.

Thomas J. Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–5957 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the Federal Register, notice of approved Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amended and Restated Compact for Regulation of Class III gaming between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon which was executed on January 10, 1997.

DATES: This action is effective March 11, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 26, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–5886 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

ACTION: Notice of approved tribal/state compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Otoe-Missouria Tribe and the State of Oklahoma, which was executed on December 6, 1996.

DATES: This action is effective March 11, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 21, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–5885 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

(AZ–020–07–1430–00; AZA 29960)

Notice of Intent To Prepare an Environment Assessment Analyzing the Impacts of the Proposed Exchange of Approximately 4,300 Acres of Public Land in Maricopa County and up to 700 Acres of Private land Within the Saguaro National Park Boundaries in Pima County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Assessment.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental assessment for the exchange of public lands in Maricopa County, Arizona for private lands of equal value in Pima County, Arizona.

1. Identification of the geographic areas involved: The proposed land exchange involves approximately 4,300 acres of public lands currently managed by the Phoenix Field Office, Bureau of Land Management, that are located southwest of Lake Pleasent (south of State Highway 74) near Phoenix, Arizona. The private lands to be offered in exchange (up to 700 acres) are within the Saguaro National boundaries as authorized by Pub. L. 103–364, October 14, 1994.

2. At a minimum, the no action alternative and an alternative that considers the proposed action will be analyzed.

3. General types of issues anticipated: the proposed land exchange involves issues related to the natural resource values and uses of public lands in question. Issues to be fully analyzed will involve impacts on water resources, native vegetation, wildlife, recreation, socioeconomic, public access, grazing allotments, minerals and cultural resources.

4. Disciplines to be represented and used to prepare the environmental assessment: wildlife, biology, recreation, realty, range, socioeconomic, geology and archaeology,

DATES: The kind and extent of public participation: Public open house scoping meetings will be held at the following locations and times:

Tucson Open House, March 26, 1997 4–8 p.m. at the Picture Rocks Retreat, 7101 W. Picture Rocks Road, Tuscon, Arizona.

Phoenix Open House, March 27, 1997 4–8 p.m. Bureau of Land Management, Phoenix Field Office Conference Room, 2015 W. Deer Valley Road, Phoenix, Arizona (602) 780–8090.

Written comments may be submitted during the public meeting or to the address given in the section below. Public comments will be accepted until 30 days after the publication of this Notice.

ADDRESSES: Written comments concerning the Environmental Assessment should be submitted to Bureau of Land Management, Attn. Shela McFarlin, Project Manager, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Shela McFarlin, Bureau of Land Management, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, phone (602) 780–8090.

Dated: March 5, 1997.

William T. Childress,

Resource Advisor.

[FR Doc. 97–5959 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–32–M

[AZ–930–07–1020–00]

Notice of Availability of the Proposed Plan Amendment of Land Use Plans in Arizona for Implementation of Arizona Standards for Rangeland Health and Guidelines for Grazing Administration, Finding of No Significant Impact, and Environmental Assessment Summary

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, an environmental assessment (EA) on the Statewide Plan Amendment for Implementation of Arizona Standards and Guidelines has been prepared. The Proposed Plan Amendment would amend Arizona Bureau of Land Management (BLM) land use plans (Resource Management Plans, Management Framework Plans, and amendments) containing decisions that conflict with Arizona Standards and Guidelines. The modified decisions will bring the affected plans and Arizona Standards and Guidelines into conformance.

The EA assessed the impacts associated with modifying land use plan decisions. An analysis of potential environmental impacts found that impacts would not be significant, resulting in a Finding of No Significant Impact (FONSI).

DATES: Protests on the proposed decisions in the Proposed Plan Amendment for Implementation of Arizona Standards and Guidelines must be postmarked by April 7, 1997.

ADDRESSES: Protests must be sent to Director (210); Bureau of Land Management; 1849 C Street, NW; MS–1000LS; Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ken Mahoney, Team Leader, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004, Telephone: (602) 417–9238.

SUPPLEMENTARY INFORMATION: Three alternatives are considered in the EA. The no action alternative (continuation of current management) provides a baseline for comparison with other alternatives. The Proposed Action modifies land use plan decisions which conflict with Arizona Standards and Guidelines. This action affects decisions in the Safford and Yuma Resource Management Plans. Alternative A analyzes the effects of decision changes which would be needed if the Fallback Standards and Guidelines, contained in 43 CFR 4180, were to be adopted. Alternative A would affect decisions in the Arizona Strip, Safford, and Yuma Resource Management Plans.

Arizona Standards and Guidelines were developed in partnership with the Arizona Resource Advisory Council and with other public involvement.

Other Relevant Information

The proposed decision is subject to a 30-day protest period as required by BLM planning regulations. Any person who participated in this planning process and has an interest that may be adversely affected by the proposed decision may submit a protest following the procedures provided in 43 CFR 1610.5–2.

Following the resolution of any protest and Governor's consistency review, a final decision on the Statewide Plan Amendment for Implementation of Arizona Standards and Guidelines will be documented in

a decision record. Copies of the decision record will be distributed to identified parties.

Copies of the Proposed Plan Amendment of Land Use Plans in Arizona for Implementation of Arizona Standards for Rangeland Health and Guidelines for Grazing Administration can be reviewed in the Public Rooms of the following BLM Offices:

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004

Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790

Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401

Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406

Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027

Safford Field Office, 711 14th Avenue, Safford, Arizona 85546

Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748

Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365–2240

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–5919 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–32–M

[ES–960–1910–00–4377] ES–48640, Group 171, Minnesota

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of a portion of the west boundary of the Grand Portage Indian Reservation, Townships 63 and 64 North, Range 4 East, Fourth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 17, 1997.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 17, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 3, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–6057 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–GJ–P

[ES–960–1910–00–4377] ES–48642, Group 176, Minnesota

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of fractional section 14, south of the Minnesota River, Township 115 North, Range 39 West, Fifth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 17, 1997.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 17, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 3, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–6061 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–GJ–P

[ES–960–1910–00–4377; ES–48641, Group 171, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of a portion of the subdivisional lines, and the partial subdivision of section 24, Township 64 North, Range 5 East, Fourth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 17, 1997.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 17, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 3, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–6062 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–GJ–P

Gauley River National Recreation Area

AGENCY: National Park Service.

ACTION: Availability of final general management plan/final environmental impact statement for the Gauley River National Recreation Area, Fayette and Nicholas counties, West Virginia.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of a final general management plan/environmental impact statement/land protection plan (FGMP/FEIS/LPP) for the Gauley River National Recreation Area. The draft environmental impact statement was on public review for 150 days from June 6 through November 7, 1994.

Four alternatives for future resource protection, interpretation, visitor use, and facility development were presented in the Draft GMP/EIS/LPP which was distributed for public review. During that review period, over 300 comments were received and summarized for use by the NPS in its selection of a alternative. As a result of that analysis, Alternative B, with minor modifications, was chosen as the proposed final plan.

Key components of the Final GMP/FEIS/LPP are the continuation of existing whitewater rafting and boating activities, along with providing other recreational opportunities. Land acquisition will be needed to implement most of the recommended activities and protection measures—such as public access to the river and the development of a trails system. Development will be limited to a small visitor and operations facility, two small maintenance buildings, parking, two middle and one lower river access points, one primitive camping area, viewpoints, trails, and minor road improvements.

DATES: The 30-day no action period for review of the FGMP/FEIS/LPP will end on April 10, 1997. A record of decision will follow the no action period.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gauley River National Recreation Area, PO Box 246, Glen Jean, West Virginia 25846, or telephone 304–465–0508.

Dated: March 5, 1997.

Pete Hart,

Superintendent, Gauley River NRA.

[FR Doc. 97–5986 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 1, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 26, 1997.

Beth Boland,

Acting Keeper of the National Register.

COLORADO

El Paso County

Bemis Hall (Colorado College MPS), 920 N. Cascade Ave., Colorado Springs, 97000273

Cossitt, Frederick H., Memorial Hall (Colorado College MPS), 906 N. Cascade Ave., Colorado Springs, 97000272

CONNECTICUT

Litchfield County

Northfield Knife Company Site, Address Restricted, Litchfield vicinity, 97000275

Tolland County

Sharpe's Trout Hatchery Site, Address Restricted, Vernon vicinity, 97000274

Valley Falls Cotton Mill Site, Address Restricted, Vernon vicinity, 97000276

FLORIDA

Orange County

Ocoee Christian Church, 15 S. Bluford Ave., Ocoee, 97000277

MICHIGAN

Allegan County

Lake Shore Chapel, Shorewood Rd., jct. with Campbell Rd., Douglas, 97000280

Ionia County

Pere Marquette Railway Belding Depot, 100 Depot St., Belding, 97000282

Kalamazoo County

Richland Historic District, 7567—8020 N. 32nd, 8023—8047 Church, 8951—8965 Park Sts., 8650—8118 E. D Ave., 8760—8905 Gull Rd., 9057—9063 Railroad, Richland, 97000278

Oakland County

Smith, Melvyn Maxwell and Sara Stein, House, 5045 Ponvalley Rd., Bloomfield Township, Pontiac vicinity, 97000283

Shiawassee County

Cobb, Hezekiah W. and Sarah E. Fishell, House, 115 W. 2nd St., Perry, 97000281

Wayne County

Redford Township District No. 5 School, 18499 Beech Daly Rd., Redford, 97000279

MINNESOTA

Pope County

Bickle, Ann, House, 226 E. Minnesota Ave., Glenwood, 97000284

NORTH DAKOTA

Stark County

Dickinson State Normal School Campus District, Roughly bounded by State Ave., Fairway St., 8th Ave., W., and 2nd St., W., Dickinson, 97000285

PENNSYLVANIA

Allegheny County

Oakdale Public School, 33 Hastings St., Oakdale, 97000289

Blair County

Isett, Jacob, House and Store, PA 1013, .3 mi. S of jct. with PA 1015, Tyrone Township, Arch Spring vicinity, 97000290

Bucks County

Buckingham Friends Meeting House, 5684 Lower York Rd., Buckingham Township, Lahaska vicinity, 97000291

Monroe County

Pocono Manor Historic District, Roughly bounded by PA 314, Lake and Cliff Rds., and Summit Ave., Pocono and Tobyhanna Townships, Mt. Pocono, 97000287

Pike County

Shohola Glen Hotel (Upper Delaware Valley, New York and Pennsylvania MPS), 100 Rohman Rd., Shohola Township, Shohola vicinity, 97000288

Somerset County

Uptown Somerset Historic District (Boundary Increase), Roughly bounded by W. Union and W. Main Sts., N. Center and N. Edgewood Aves., Somerset, 97000286

Washington County

Thome, James, Farm, 213 Linnwood Rd., N. Strabane Township, Eight Four vicinity, 97000292

TENNESSEE

Robertson County

Garner, Andrew E. and John E., House, 317 N. Garner St., Springfield, 97000293

WISCONSIN

Dane County

Madison Candy Company, 744 Williamson St., Madison, 97000294

[FR Doc. 97–6065 Filed 3–10–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–380]

Advice Concerning the Proposed Modification of Duties on Certain Information Technology Products and Distilled Spirits

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: March 5, 1997.

SUMMARY: Following receipt on February 27, 1997 of a request from the United States Trade Representative, the Commission instituted investigation No. 332–380, Advice Concerning the Proposed Modification of Duties on Certain Information Technology Products and Distilled Spirits, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by the USTR, the Commission will provide: (1) Profiles of the domestic and foreign information technology and distilled spirits industries, including a description of the industry and its relative strengths, (2) trends in production, (3) a brief analysis of current tariffs, (4) an assessment of patterns of imports and exports, and (5) an indication of potential increased market opportunities resulting from proposed tariff modifications. As requested, the Commission will submit its report to the USTR by April 4, 1997.

FOR FURTHER INFORMATION: Information on general aspects of the study may be obtained from John Kitzmiller, Office of Industries (202–205–3387) or, on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). A copy of this notice and the annex listing the products under consideration can be downloaded from the Commission's Internet server (http://www.usitc.gov) or may be obtained by contacting the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC, 20436, or at 202–205–1802.

BACKGROUND: At the WTO Ministerial Conference in Singapore in December 1996, economies representing over 80 percent of world trade in information technology products declared their intention to bind and eliminate customs duties and other duties and charges on a broad range of products. At the same

time, the United States agreed to eliminate its tariffs on ''white'' distilled spirits and accelerate the elimination of tariffs on ''brown'' distilled spirits.

Section 111(b) of the Uruguay Round Agreements Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 115 of the Act, to proclaim further modifications of any duty for articles contained in a tariff category that was part of the U.S. ''zero-for-zero'' initiative. This authority is subject only to the conditions set forth in section 111 which include compliance with the consultation and layover provisions of section 115 of the URAA. One of the requirements set out in section 115 is that the President obtain advice regarding the proposed action from the Commission. Accordingly, the Commission has been asked, pursuant to section 115 of the Act and section 332 of the Tariff Act of 1930, to provide information and advice concerning the proposed action.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the report. All written submissions will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of submission to USTR with the report, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than March 21, 1997. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC, 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.
Issued: March 6, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–6133 Filed 3–10–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 C.F.R. 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on February 25, 1997, two proposed consent decrees in *United States* v. *American Optical Corporation, et. al.,* Civil Action No. 97–CV–847, were lodged with the United States District Court for the District of New Jersey. These two proposed consent decrees resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* on behalf of the U.S. Environmental Protection Agency (''EPA'') against nine defendants relating to the Nascolite Corporation Superfund Site (''Site'') located on Doris Avenue in Millville and Vineland, Cumberland County, New Jersey.

One consent decree is a *de minimis* decree entered into pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g). Under the terms of the *de minimis* decree, the five defendants will pay $894,626 for unreimbursed response costs and a premium payment in satisfaction of their liability for past and future response costs at the Site. The second Consent Decree (''Second Consent Decree'') requires the four defendants to complete specified work at the Site and to pay $800,000 to the United States for unreimbursed response costs incurred with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. In addition, since the United States is further providing the parties to the Second Consent Decree with covenants not to sue under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, the United States will provide an opportunity for a public meeting in the affected area, if requested within the thirty (30) day public comment period. See 42 U.S.C. 6973(d). Any comments and/or requests for a public meeting should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *American Optical Corporation, et. al.,* D.J. Ref. 90–11–2–492.

Both proposed consent decrees may be examined at the Office of the United States Attorney, Cohen Federal Courthouse, 1 Gerry Plaza, 4th and Coopers Streets, Camden, New Jersey 08101, and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of either proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please indicate which consent decree is desired and enclose a check (there is a 25 cent per page reproduction cost) in the amount of $5.50 for the *de minimis* Decree and/or a check in the amount of $32.25 for the Second Consent Decree payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–5924 Filed 3–10–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Eureka Pipe Line Company, et al.,* Civil Action No. 6:96–0282, was lodged on February 26, 1997 with the United States District court for the Southern District of West Virginia.

The action sought civil penalties and injunctive relief against Eureka Pipe Line Company and Pennzoil Products Company under the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.*, as amended by the Oil Pollution Act of 1990 (''OPA''). The United States alleged that the Defendants have violated the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by OPA, by discharging oil in harmful quantities into navigable waters of the United States and adjoining shorelines.

Under the proposed consent decree, the Defendants will pay $867,000 in civil penalties (Eureka: $440,000; Pennzoil: $427,000), and Pennzoil has agreed to perform a set of injunctive relief measures, including, the removal of 19-miles of pipelines from active service, the pressure testing of all of its active pipelines for detection of corrosion-related problems, the performance of a comprehensive and continual visual inspection program of its active oil production operations, and the formation of a review committee to study and redress its pipeline corrosion problems, with respect to its West Virginia operations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530–0001 and should refer to *United States*

v. *Eureka Pipe Line Company, et al. Corp.*, DOJ Ref. Nos. 90–5–1–1–4206 and 90–5–1–1–4270.

The proposed consent decrees may be examined at the United States Attorney's Office, Southern District of West Virginia, 500 Quarrier Street, Suite 3201, Charleston, West Virginia 25301; Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107–4431; and at the Consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and numbers, and enclose a check in the amount of $31.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–5923 Filed 3–10–97; 8:45 am]

BILLING CODE 4410–15–M

Federal Bureau of Investigation

Criminal Justice Information Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; hate crime incident report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to SSA Paul J. Gans, (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, (304) 625–4830, Federal Bureau of Investigation, Criminal Justice Information Services, Statistical Unit, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

Overview of this information collection:

(1) Type of information collection: Collection.

(2) The title of the form/collection: Hate Crime Incident Report and Quarterly Hate Crime Report.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: 11–1 & 11–2. Hate Crime Incident Report and Quarterly Hate Crime Report.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State and Local Government. This collection will gather information necessary to collect bias motivation of selected criminal offenses. Resulting statistics are published annually.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 40,000 respondents with an average 6.6 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 6,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 5, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5955 Filed 3–10–97; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–028)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Langley Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR–15295–1: Sawtooth Planform Concept;

NASA Case No. LAR–15555–1: Molecular Level Coating of Metal Oxide Particles;

NASA Case No. LAR–15601–1: Base Passive Porosity for Drag Reduction (CIP of LAR–15246–1);

NASA Case No. LAR–15412–2: Imide Oligomers and Co-Oligomers Containing Pendent Phenylethynl Groups and Polymers Therefrom (Div of-1)

NASA Case No. LAR–14640–3–CU: An Interferometer Having Fused Optical Fibers, and Apparatus and Method Using the Interferometer (FWC of-2);

NASA Case No. LAR–15376–1: Relative Phase Measurement Instrument for Multiple Echo Systems;

NASA Case No. LAR–14448–3–SB: Multi-Layer Light-Weight, Protective Coating and Method for Application (Div of-1);

NASA Case No. LAR–15437–1: A Fire Resistant, Moisture Barrier Membrane;

NASA Case No. LAR–15280–SB: Cryogenic High Pressure Sensor (Cont of-1);

NASA Case No. LAR–15402–1: High Security Composite Safe;

NASA Case No. LAR–14673–1: Material;

NASA Case No. LAR–15017–1–SB: Polyimides Prepared in Bisphenol A;

NASA Case No. LAR–15251–7: Process for Controlling Morphology & Improving Thermal-Mechanical Performance of High Performance Polymer Networks;

NASA Case No. LAR–15138–2: Piezoelectric Loudspeaker and Transducer (FWC of-1);

NASA Case No. LAR–14840–1: Variable and Fixed Frequency Pulsed Phase-Locked Loop.

Dated: February 28, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–5971 Filed 3–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined at 8:00 a.m. on March 7, 1997, that agency business required the addition of the following item to the previously announced closed meeting (Federal Register, 62 FR 10086, March 5, 1997) scheduled for 8:10 a.m., Friday, March 7, 1997.

4. Request from a Federal Credit Union to Convert to a Community Charter.

The Board voted (2-to-0, Vice Chairman Bowné was unavailable) that this request, which was one of the requests from federal credit unions to convert to a community charter scheduled for the open meeting, be closed to the public, and that no earlier announcement of this change was possible.

The Board voted (2-to-0, Vice Chairman Bowné was unavailable) at 9:30 a.m. on March 7, 1997, to delete this added item from the closed agenda. Agency business required this change and no earlier announcement of this was possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703)–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–6252 Filed 3–7–97; 3:30 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before May 12, 1997.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Room 311, Washington, D.C. 20506, or by email to: sdaisey@neh.fed.us. Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

OMB Number: 3136–0134.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH grantees.

Total Respondents: 14,097.

Frequency of Collection: On occasion.

Total Responses: 14,097.

Average Time per Response: Varied according to type of information collection.

Estimated Total Burden Hours: 107,888 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Juan Mestas,

Deputy Chairman.

[FR Doc. 97–6030 Filed 3–10–97; 8:45 am]

BILLING CODE 7536–01–M

National Council on the Humanities; Meeting

March 5, 1997.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on March 24–25, 1997.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on March 24–25, 1997, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code, because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate

implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on March 24, 1997 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:30 a.m.
- Research/Education Programs—Room M07
- Public Programs—Room 420
- Challenge Grants and Preservation and Access—Room 415

(Closed to the Public)

10:30 a.m. until Adjourned—Discussion of specific grant applications before the Council

12:30–2:00 p.m.—Jefferson Lecture Committee—Room 430

2:00–3:00 p.m.—Conversation with Stephen Toulmin, 1997 Jefferson Lecturer—Room M–09

Council Discussion Groups

(Portions Open to the Public)

3:00–5:00 p.m.
- External Affairs—Room 527
- Strategic Plans/Enterprise—Room 503
- Federal/State Partnership—Room 507

The morning session on March 25, 1997 will convene at 10:30 a.m. in the 1st Floor Council Room, M–09. The session will be open to the public as set forth below:

Minutes of the Previous Meeting
Introductory Remarks
Reports
- A. Staff Report
- b. Budget Report
- C. Legislative Report
- D. Reports on Policy & General Matters
  1. Overview
  2. Research and Education Programs
  3. Challenge Grants and Preservation and Access
  4. Public Programs/Enterprise
  5. Jefferson Lecture

The remainder of the proposed meeting will be closed to the public for the reasons stated above. Further information about this meeting can be obtained from Michael S. Shapiro, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael S. Shapiro,

Advisory Committee Management Officer.

[FR Doc. 97–6029 Filed 3–10–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Graduate Education (57).

Date and Time: March 20 and 21, 1997, 8:30 AM - 5:00 PM.

Place: Room 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Closed.

Contact Person: Dr. Sonia Ortega, Division of Graduate Education, NSF–NATO Postdoctoral Fellowship Programs, Room 907N, National Science Foundation 4201 Wilson Blvd., Arlington, VA 22230, 703/306–1630.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF–NATO Postdoctoral Fellowship Program (NATO).

Agenda: To review and evaluate NSF–NATO proposals.

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. 552(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Complications with meeting logistics.

Dated: March 6, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5969 Filed 3–10–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

[SGA 97–02]

Voluntary Partnership Planning and Phase I Implementation Grants

AGENCY: National Skill Standards Board.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The National Skill Standards Board (NSSB), under the National Skill Standards Act of 1994 (the Act), announces the availability of funds for initiating Voluntary Partnership activity through combined Planning and Phase I Implementation grants. A grant will be made to the organization or coalition of organizations best positioned and capable of convening key stakeholder representatives from across a cluster as defined by the National Skill Standards Board. It is the Board's intent that one grant will be made in each of the three clusters.

It is anticipated that three awards will be made in the range of $80,000 to $160,000, depending on the statement of work proposed by the participant. The period of performance will vary, but will not exceed nine months. Awardees of this grant will be eligible to receive a non-competitive grant for long-term Voluntary Partnership activities.

DATES: The closing date for receipt of applications shall be April 10, 1997, at 4:45 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be made to the Division of Contract Administration and Grant Management, Attention: Lisa Harvey, U.S. Department of Labor, Procurement Services Office, 200 Constitution Avenue, N.W., Room N–5416, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: For questions/clarifications regarding information contained in this announcement, contact Lisa Harvey at (202) 219–9355. (This is not a toll free number). Telephonic or faxed requests for the SGA will not be honored.

SUPPLEMENTARY INFORMATION: The National Skill Standards Board is soliciting proposals on a competitive basis for the conduct of activities to convene key stakeholder representatives of the clusters as defined by the National Skill Standards Board. The purpose of the grant is to initiate the implementation of the Voluntary Partnerships activities through the nine month Voluntary Partnership Planning and Phase I Implementation Grants. Applicants successfully completing the Planning and Phase I Implementation will be qualified to apply for NSSB recognition as a Voluntary Partnership. As such, they will be eligible to receive a non-competitive grant for long-term Voluntary Partnership activities. The NSSB is an independent agency for which the U.S. Department of Labor serves as fiscal agent. The Office of the Assistant Secretary of Administration (OASAM) within the U.S. Department of Labor will administer the grant process on behalf of the National Skill Standards Board. All inquiries related to the grants should be directed to OASAM.

This announcement consists of three parts. Part I discusses the procedures for eligible applicants who wish to apply

for these funds. Part II provides the detailed Statement of Work/Reporting Requirements. Part III describes the selection process/criteria for the award.

Part I. Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to the organization or group of organizations best positioned and capable of convening key stakeholders representative of the three clusters enumerated below. It is the Board's intent that one grant will be made in each cluster.

Part III enumerates and defines in depth a series of criteria that will be utilized to rate applicant submissions. There will also be a responsiveness test conducted to determine whether applicants have addressed fundamental criteria and are eligible applicants. If it is determined that an application has not clearly attempted to respond to the criteria, that application will be deemed nonresponsive and not be considered any further for a grant. One aspect of responsiveness include clearly demonstrating as willingness to support the mission of the NSSB and to work within existing Board policy, and fiscal responsibility as defined below.

1. Willingness To Support the Mission of the NSSB and to Work Within Existing Board Policy

The applicant must provide a written statement supporting the Board's mission and guiding principles, and committing to work within proposed Board policy. The statement should demonstrate an understanding of the Board's work and existing policy.

Mission. The mission of the National Skill Standards Board is to encourage the creation and adoption of a national system of skill standards which will enhance the ability of the United States to compete effectively in a global economy. These voluntary skill standards will be developed by industry in full partnership with education, labor and community stakeholders, and will be flexible, portable and continuously updated and improved.

This national skill standards system is intended to do the following:

- Promote the growth of high performance work organizations in the private and public clusters that operate on the basis of productivity, quality and innovation, and in the private cluster, profitability;
- Raise the standard of living and economic security of American workers by improving access to high skill, high wage employment and career opportunities for those currently in, entering, or re-entering the workforce; and
- Encourage the use of world-class academic, occupational and employability standards to guide continuous education and training for current and future workers.

Principles Guiding the Board's Work.

- The skill standards must be voluntary. The system will only work if the final product is relevant to employers, unions, educators and employees, jobseekers and students.
- The process will be business-led in full partnership with education, labor and community stakeholders.
- The skill standards must be flexible, portable and continuously updated and have equal relevance to both the public and private clusters.
- The Board's work will be integrated with relevant, cutting edge work already being done by employers, states, unions and education systems.
- Skill standards must be dynamic and geared toward the future, with an emphasis on the process of continuous improvement. The Board's mission will not be fully achieved if standards are static and merely codify present practices.
- The standards must be consistent with existing civil rights laws.

Existing Board Policy. The Board's ''Proposal to Establish a Voluntary National Skill Standards System'' (the Proposal) published in the Federal Register on December 19, 1996, Vol. 61, No. 245, pp. 67068–67072. A copy of the Proposal can be obtained by downloading from the NSSB home page on the internet (address: www.nssb.org) or by contacting Lisa Harvey (202) 219–9355. The Proposal represents the Board's working policy framework. It is the intent of the NSSB to continually review the effectiveness of its policy in practice, particularly in early implementation efforts. These three grants represent the initiation of Voluntary Partnership activity and their experiences will be included as information considered in the review of NSSB policy. Applicants should be aware that Board policy is evolving.

2. Fiscal Responsibility

The applicant must be—or have delegating authority to—a viable financial agent. This viability will be demonstrated by a certification that the agent has received an independent audit within the past year that was conducted utilizing generally accepted accounting principles (GAAP). This audit must have found that the agent had in place adequate internal accounting and other control systems to provide reasonable assurance that it is managing its funds in accordance with applicable laws and regulations, and that the organization has complied with laws and regulations that may have material effect on its financial statements and on whatever major Federal assistance programs in which it is involved.

Evidence of viability may be provided by a copy of a letter from the independent auditor who conducted the most recent financial review of the putative financial agent. Organizations on the Federal debarment list and any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts.

Part I shall contain the Standard Form (SF) 424, ''Application for Federal Assistance'' and SF 424A ''Budget.'' The individual signing the SF 424 on behalf of the applicant shall represent the responsible financial and administrative entity for the grant should that application result in an award.

Part II shall contain a technical proposal that demonstrates the Offeror's capabilities in accordance with the Statement of Work contained in this announcement, and proposes specific activities and timeframes with which to accomplish the Statement of Work. No cost data or reference to price shall be included in the technical proposal.

C. Hand Delivered Proposals

Proposals must be post marked at least five (5) days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated place by 4:45 p.m., Eastern Time (insert date x number of days after date of publication. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the office designated in the Solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring

receipt of applications by the 20th of the month must be mailed by the 15th);

(2) Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The term ''post marked'' means a printed, stamped, or otherwise place impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Period of Performance

The period of performance will vary according to activities proposed, but will not exceed 9 months from the date of execution. It is anticipated that grant awards will be in the $80,000–160,000 range depending on the activities proposed by the applicant. Applicants must indicate a start date no later than June 30, 1997.

Part II—Statement of Work/Reporting Requirements

A. Project Summary

The National Skill Standards Board intends to make grants ranging from $80,000 to $160,000 to the organization or group of organizations best positioned and capable of convening key stakeholders in each of three clusters. This convening body will build coalitions to seek NSSB recognition as Voluntary Partnerships for the purpose of developing voluntary skill standards systems that can be endorsed by the National Skill Standards Board. One grant will be made in each of the following three clusters:

- Manufacturing, Installation and Repair.
- Wholesale/Retail Sales.
- Business and Administrative Services.

Further detail on the industries and occupations contained in these three clusters can be obtained by downloading from the NSSB home page on the internet (address: www.nssb.org) or by contacting Lisa Harvey (202) 219–9355. These very broad clusters of major industries and occupations are consonant with the dictates of the Act (Sec. 504(a)) which denotes that such clusters of occupations shall involve one or more than one industry in the United States and that share characteristics that are appropriate for the development of common skill standards.

There will be two phases in the Statement of Work. Throughout both phases, there will be independent technical assistance and evaluation agreements in place. Successful applicants under this Solicitation will stipulate that they will cooperate with both the technical assistance and evaluation grantees and provide to both entities whatever data is requested.

B. Statement of Work

The first phase will be the development and solidification of the coalition of all industry partners—industry employers, labor organizations, educators, and community based organizations, to name some of the major stakeholders—into an entity that will seek NSSB recognition as a Voluntary Partnership. The Voluntary Partnership will constitute a project management structure that will ultimately guide the development of a cluster-wide skill standards system to be endorsed by the National Skill Standards Board. It is anticipated that when the first phase is completed, there will be such a coalition in place. However, it is expected that coalition building and expansion activities will be a continuing function of the Voluntary Partnership.

The second phase will be for the cluster-wide coalition to develop a long-term strategic plan for activities to be undertaken following the conclusion of the Planning and Phase I Implementation Grant. All stakeholders as identified in the Criteria for Recognition as a Voluntary Partnership must be involved in the planning process. The final criteria will be provided at the start date of these grants and will be consistent with the legislative definition, section (504(b)) of the Act. A copy of the legislation can be obtained by downloading from the NSSB home page on the internet (address: www.nssb.org) or by contacting Lisa Harvey (202) 219–9355.

The anticipated grant deliverables are enumerated under the reporting requirements specified in Part B. below.

C. Reporting Requirements.

The Grantee is required to provide reports and documents listed below:

(1) *Quarterly Financial Reports.* The grantee shall submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following the end of each quarter, three (3) copies of a quarterly Financial Status Report (SF 269) until such time as all funds have been expended or the period of availability has expired.

(2) *Progress Reports.* The grantee shall submit to the GOTR two progress reports.

The First report shall be submitted when the cluster-wide coalition has been assembled; this report shall include:

- Documented commitment to participate from members of a coalition meeting criteria for a Voluntary Partnership as specified by the Board.
- Documented commitment to align efforts with NSSB policy and guidelines for Voluntary Partnership and Voluntary Partnership activities.
- A written statement of operating principles and procedures defining roles and decision-making processes for the Voluntary Partnership.

The second report shall be submitted upon the completion of the long-term strategic plan and shall include:

- A long-term strategic plan will identify long- and short-term goals, objectives and strategies to successfully develop the components of a cluster-wide skill standards system, including, but not limited to: (1) the identification of concentrations for the cluster; (2) the development of a basic certificate for that cluster; and (3) the initiation of a process by which specialty certificates in that cluster will be endorsed. The strategic plan will include a budget. The Strategic Plan will also address communications issues related to building stakeholder support for the skill standards and cost/revenue implications of maintaining a high quality system.
- A completed application for NSSB recognition as a Voluntary Partnership and for long-term implementation funds. The application will be provided to the grantee on the start date.

Corrective Action

There is a presumption that the first phase shall be completed within six months of the execution of the Grant and that this report shall be filed within thirty days after that completion and that the second phase will be completed within three months after the completion of the first phase. Should there be some delay in completion the grantee may be required to report in writing and, in such form as the GOTR may prescribe, that there is such a delay, what the causes are for it, and a timetable for completion of the activity. The Grant Officer and grantee will work together to identify mutually acceptable corrective action within one month. If the Grant Officer and grantee cannot reach a mutually acceptable corrective action, the Grant Officer can unilaterally impose his/her corrective action.

Part III. Rating Criteria for Award/Selection Process

Prospective offerors are advised that the selection of grantees for an award is to be made after careful evaluation of proposals by a panel of specialists. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The panelists will evaluate the proposals for acceptability, with emphasis on the scoring criteria enumerated below. Although some scoring criteria are weighted more heavily than others, the NSSB emphasizes that a minimum score on each criterion is critical to the successful performance of the Statement of Work. Applicants should be advised that the proposal must score at least 60% of the total points in *each* category to be considered technically acceptable.

A. Employer Leadership (35 points)

The proposal must include effective evidence that employers will play a leadership role. Effective evidence will be judged on:

- The strength and specificity of the commitments, a letter of commitment from an employer should enumerate the details of that commitment (e.g., two executives with strong backgrounds in production line management will be available for six months on a 40 percent basis);
- The diversity of employers, e.g., presence of large and small employers, public and private employers; and
- The extent to which employers from across the cluster are represented.

B. Involvement of All Key Stakeholders (25 points)

The applicant must supply clear evidence of an ability to collaborate with all key stakeholders within the designated cluster including employers, organized labor, education, government and community-based organization representatives. It is expected that an application will define and enumerate who those stakeholders are, together with a concise statement of why the particular entity is considered a key stakeholder in the given cluster. Letters of commitment from key stakeholders can be included with the application.

The factors referred to in Criterion A will be utilized here as well. A demonstrated history with coalition and specificity with regard to how and to what degree the key stakeholders have agreed to participate will be considered effective evidence.

C. Employment (10 points)

An applicant organization must demonstrate that its coalition includes a group of employers that collectively employs at least 40 percent of the workforce within the cluster. Applicants are cautioned to approach this criterion with specificity. Effective evidence may include member survey results from trade associations, business organizations and employment statistics from individual employers or projections based on hard data regarding number and size of employers involved.

D. Required Knowledge (10 points)

The applicant must demonstrate that the coalition has a working knowledge in these areas: Skill standards, training, workforce development, work organization, assessment, and certification. The applicant must identify both the coalition member and the accomplishments that demonstrate a working knowledge of these key areas: e.g. XXXX Company has received the Malcolm Baldrige award and is an acknowledge national leader in high performance work practices; XXXX Trade Association has a 50-year history of certification; XXXX Labor Group has a long-standing apprenticeship training program; XXXX Education Institution has a leading assessment and certification center in the region.

Offerors are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The panelists' evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the Grant Officer, after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what is determined to be the most advantageous to the Federal Government in terms of technical quality and other factors.

E. Rating Criteria

Applicants are advised that selection for grant award is to be made after careful evaluation of technical applications by a panel. Each panelist will evaluate applications against the various criteria on the basis of 80 points.

The scores will then serve as the primary basis to select applications for potential award.

1. Technical criteria	Points
a. Employer Leadership	35
b. Involvement of all Key Stakeholders	25
c. Employment	10
d. Required Knowledge	10

F. Evaluation Process and Competitive Range

Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based on initial proposal evaluation, for the purpose of selecting those qualified applicants with whom the Government will hold discussions. Competitive range will be based on the technical evaluation.

Following the Grant Officer's call for the receipt of final revisions to the proposals (Best and Final Offers), the evaluation process described above will be repeated to consider such revisions are submitted by applicants. Following this evaluation, the Government will determine which applicant has received the greatest number of points, and is thus in line for award of the resulting grant.

g. Content of Grant Application

1. Technical Proposal

The technical proposal shall not exceed *20* single sided, double spaced, 10 to 12 pitch typed pages. Given the page limitation, it is important to plan your proposal submission carefully so as to include all relevant information.

2. Cost Proposal

The cost (business) proposal must be separate from the technical proposal. The transmittal letter, all letters of support, and public policy certificates shall be attached to the business proposal, which shall consist of the following:

a. *Standard Form 424:* Application for Federal Assistance, signed by an official from the applicant organization who is authorized to enter the organization into a grant agreement with the Department of Labor. *The Catalog of Federal Domestic Assistance (CFDA) Number is 17.248.*

b. *Budget Information:* Budget Information must consist of the following: ''Budget Information,'' Sections A–F of Standard Budget Form 424A.

(Use the forms and instructions provided, with the following qualifications)

(1) In Section A, Budget Summary, enter in column (e), the amount of Federal funds applied for; enter in column (f) the total value of any match/in-kind contributions. Provide totals in column (g) and row 5.

(2) In Section B, Budget Categories, enter detailed separate cost breakdowns for both the amount of Federal funds requested in the grant application (entered in column 1) and the total amount of in-kind services and/or matching funds that shall be made available (column 2). Grantees shall format the budget backup so that program costs are easily distinguishable from administrative costs.

The object class category entitled ''j. Indirect Charges'' shall not be used when it is proper and appropriate to direct charge costs relating to the program. The indirect charges object class category is properly used to display costs based on (a) an approved, negotiated indirect cost rate and plan with either the Department of Labor (DOL) or another cognizant Federal Government audit agency; or (b) a proposed rate based on a cost allocation plan that might be used as a 90-day billing rate for the grant award until the grantee can negotiate an acceptable and allowable rate with the Office of Cost Determination of DOL.

3. *Budget Back-up Information:* As an attachment to the Standard Budget Forms, the applicant must provide at a minimum, and on separate sheet(s), program/administrative costs which include the following information (applicants are encouraged to use the attached budget back-up format that provides for display of all the required information):

(1) A breakout of all personnel costs by position title, salary rates and percent of time of each position to be devoted to the proposed project;

(2) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(3) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-agreements and any other costs. The applicant shall include costs of any required travel described in the attached Special Provisions. Mileage charges shall not exceed *31* cents per mile.

(4) Description/specification of and justification for equipment purchases, if any. Any non-expendable personal property having a unit acquisition cost of $500 or more, and a useful life of two or more years must be specifically identified (State and local governments see 29 CFR Part 97, all others see 29 CFR Part 95).

Applicants are advised that information and dollar amounts provided in the budget back-up must be consistent with and therefore, easily cross-walked to Section B, Object Class Category, of the Standard Budget Forms. They should also be consistent with the budget narrative contained in the application.

d. *Budget Narrative:* (1) A narrative explanation of the budget which describes all proposed costs and indicates how they are related to the operation of the project.

(2) This shall include, at a minimum, an identification of staff associated with the program and a description of their duties relative to the program. The description shall justify the percentages of staff time being charged to the grant.

(3) Travel, equipment, supplies, contractual (including subgrants), and other charges in the budget shall be explained and justified with respect to the project approach.

(4) Provide this information separately for the amount of requested Federal funding and the amount of proposed match/in-kind contribution.

e. *Indirect Cost Information:* If indirect charges are claimed in the proposed budget, the applicant must provide on a separate sheet, the following information:

(1) Name and address of cognizant Federal audit agency;

(2) Name, address and phone number (including area code) of the Government auditor;

(3) Documentation from the cognizant agency indicating:

(a) Indirect cost rate and the base against which the rate should be applied;

(b) Effective period (dates) for the rate;

(c) Date last rate was computed and negotiated;

(4) If no government audit agency computed and authorized the rate claimed, provide brief explanation of computation, who computed and the date; if the applicant is awarded a grant, the proposed indirect rate must be submitted to a Federal audit agency within 90 days of award for approval.

H. OMB Clearance

Offerors awarded a grant under this solicitation will be required to provide the supporting documents needs to clear data collection instruments with the U.S. Department of Labor and the Office of Management and Budget under the Paperwork Reduction Act of 1980, as amended, if collection activities under the grant require response from ten (10) or more members of the public. In this regard, the narrative for all projects should indicate the scope the of planned data collection activity.

I. Disposal of Data

Data collected by the grantee will become the property of the Department of Labor, upon completion of this project. The grantee shall defer to the GOTR as early as possible for guidance as to ensure that the data are documented and easily accessible and usable.

J. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Governments—OMB Circular A–87.

Educational Institutions—OMB Circular A–21.

Non-Profit Organizations—OMB Circular A–122.

Profit Making Commercial Firms—FAR 31.2.

Profit will *not* be considered an allowable cost in any case.

K. Administrative Provisions

The grant awarded under this SGA shall be subject to the following administrative standards and provisions:

29 CFR Part 95—Federal Standards for Federally Funded Grants and Agreements.

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

L. Grant Assurances and Certifications

The applicant must include the attached assurances and certifications.

M. Special and General Provisions

These are attached for your information. If the applicant is awarded a grant, it will be required to operate the program in accordance with these provisions. Please note that the Special Provisions actually incorporated into the grant may differ from those included in the SGA, in order to reflect information specific to the application.

Signed at Washington, D.C., this sixth day of March 1997.

Edythe West,

Executive Director, National Skill Standards Board.

[FR Doc. 97–6059 Filed 3–10–97; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 149 to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of the Washington Nuclear Project No. 2 (WNP–2), located in Benton County, Washington.

The amendment is effective as of the date of issuance.

The amendment replaces, in their entirety, the current technical specifications (TS) with a set of TS based on NUREG–1434, ''Standard Technical Specifications, General Electric BWR/6 Plants,'' Revision 1, April 1995. In addition, the amendment adds a new license condition 2.C.(30) reflecting the licensee's commitments regarding relocation of TS requirements to licensee-controlled documents and the implementation of Regulatory Guide 1.160. The amendment also adds an Appendix C listing those commitments. The amendment also deletes license condition 2.C.(18)(c) which had required the licensee to provide, prior to startup from the first refueling outage, TS for the bypass timer setting and manual inhibit switch of the automatic depressurization system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on June 26, 1996 (61 FR 33144). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendment dated December 8, 1995, as supplemented by letters dated July 9, 1996, August 30, 1996, September 6, 1996, December 12, 1996, January 14, 1997, January 31, 1997, and February 10, 1997, (2) Amendment No. 149 to Facility Operating License No. NPF–21, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 4th day of March 1997.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5998 Filed 3–10–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

The agenda for the 439th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on March 6–8, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been revised to include Committee discussion of a proposed ACRS report on plant specific application of safety goals. All other items pertaining to this meeting remain the same as published in the Federal Register on Thursday, February 20, 1997 (62 FR 7810).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

Dated: March 5, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–5997 Filed 3–10–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 10, 17, 24, and 31, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 10

Monday, March 10

10:30 a.m.—Briefing on 10 CFR 50.59 Regulatory Process improvements (PUBLIC MEETING) (Contact: Eileen McKenna, 301–415–2189)

2:30 p.m.—Briefing on Implementation of Maintenance Rule, Revised Regulatory Guide, and Consequences (PUBLIC MEETING) (Contact: Suzanne Black, 301–415–1017)

Thursday, March 13

11:30 a.m.—Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 17—Tentative

There are no meetings scheduled for the week of March 17.

Week of March 24—Tentative

Tuesday, March 25

10:00 a.m.—Briefing on High-Burnup Fuel Issues (PUBLIC MEETING) (Contact: Ralph O. Meyer, 301–415–6789)

11:30 a.m.—Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 31—Tentative

Monday, March 31

11:30 a.m.—Affirmation Session (PUBLIC MEETING) (if needed)

2:00 p.m.—Classified Security Briefing (Closed—Ex. 1)

2:30 p.m.—Meeting with DOE on External Regulation of DOE Facilities (PUBLIC MEETING)

Note: The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmhnrc.gov or dkwnrc.gov.

Dated: March 7, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 97–6226 Filed 3–7–97; 2:05 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22541; 812–10200]

PaineWebber America Fund, et al.; Notice of Application

March 4, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: PaineWebber America Fund; PaineWebber Cashfund, Inc., PaineWebber Investment Series; PaineWebber Managed Assets Trust; PaineWebber Managed Investments Trust; PaineWebber Managed Municipal Trust; PaineWebber Master Series, Inc.; PaineWebber Municipal Series; PaineWebber Mutual Fund Trust; PaineWebber Olympus Fund; PaineWebber Financial Services Growth Fund Inc.; PaineWebber RMA Money Fund, Inc.; PaineWebber RMA Tax-Free Fund, Inc.; PaineWebber Securities Trust, PaineWebber Series Trust; Strategic Global Income Fund, Inc.; Triple A and Government Series—1997, Inc.; 2002 Target Term Trust Inc.; All-American Term Trust Inc.; Global High Income Dollar Fund Inc.; Global Small Cap Fund Inc.; Investment Grade Municipal Income Fund Inc.; Insured Municipal Income Fund Inc.; Managed High Yield Fund Inc.; PaineWebber Municipal Money Market Series; PaineWebber Investment Trust; PaineWebber Investment Trust II; PaineWebber Investment Trust III; Liquid Institutional Reserves; Managed Accounts Services Portfolio Trust (collectively, ''Affiliated Funds''); PaineWebber Incorporated (''PaineWebber''), and Mitchell Hutchins Asset Management Inc. (''Mitchell Hutchins''), on behalf of themselves and any other registered investment companies, or series thereof, which currently or in the future may be advised by Mitchell Hutchins or PaineWebber, or any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with PaineWebber or Mitchell Hutchins.[1]

RELEVANT ACT SECTIONS: Order requested under rule 17d-1 to permit certain transactions in accordance with section 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Affiliated Funds to pay, and PaineWebber as lending agent to accept, fees based on a share of the revenue generated from securities lending transactions, as described in the application.

FILING DATES: The application was filed on June 14, 1996 and amended on December 4, 1996, and February 26, 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 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 31, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the following Affiliated Funds is registered under the Act as a closed-end management investment company: Strategic Global Income Fund, Inc.; Triple A and Government Series—1997, Inc.; 2002 Target Term Trust Inc; All-American Term Trust Inc.; Global High Income Dollar Fund Inc.; Global Small Cap Fund Inc.; Investment Grade Municipal Income Fund Inc.; Insured Municipal Income Fund Inc.; and Managed High Yield Fund Inc. All of the other Affiliated Funds are registered under the Act as open-end management investment companies. All of the closed-end companies and PaineWebber Cashfund, Inc., PaineWebber Master Series, Inc., PaineWebber Financial Services Growth Inc., PaineWebber RMA Money Fund, Inc., and PaineWebber RMA Tax-Free Fund, Inc. are organized as Maryland corporations; Managed Accounts Services Portfolio Trust is organized as a Delaware business trust; and the remaining Affiliated Funds are organized as Massachusetts business trusts. The Affiliated Funds invest in a range of equity and fixed-income securities.

2. PaineWebber, an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser and Mitchell Hutchins, a registered investment adviser under the Advisers Act and a wholly-owned subsidiary of PaineWebber, serves as sub-adviser to PaineWebber Cashfund, Inc., PaineWebber RMA Money Fund, Inc., PaineWebber RMA Tax-Free Fund, Inc., PaineWebber Managed Municipal Trust, PaineWebber Municipal Money Market Series, and Liquid Institutional Reserves. Mitchell Hutchins serves as investment adviser to the remaining Affiliated Funds, although it has delegated certain of its responsibilities with respect to certain Funds to sub-advisers.

3. PaineWebber is a publicly owned securities brokerage, investment banking, and asset management firm offering a broad range of services to corporations, institutions, and substantial private investors worldwide. PaineWebber and Mitchell Hutchins are registered as investment advisers under the Investment Advisers Act of 1940 and as broker-dealers under the Securities Exchange Act of 1934. PaineWebber is also a member of the National Association of Securities Dealers, Inc., and the New York Stock Exchange.

4. Each of the Affiliated Funds is permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. Mitchell Hutchins and PaineWebber previously proposed that each Affiliated Fund lend its securities to increase the income earned by such Fund, thus increasing total return to shareholders. The boards of directors/trustees (''Board'') of certain Affiliated Funds approved that proposal and authorized commencement of securities lending activities with respect to such Funds. Pursuant to such approval, PaineWebber's compensation for acting as lending agent is limited, pending receipt of the exemptive relief

[1] All existing Affiliated Funds that currently intend to rely on the requested relief have been named as parties to the application. Certain other funds, or series thereof, for which Mitchell Hutchins or PaineWebber, or any entity controlling, controlled by, or under common control with Mitchell Hutchins or PaineWebber, acts as investment adviser do not presently intend to rely on the requested order. Any such Affiliated Fund, or series thereof, however, would be covered by the order if it later proposed to enter into a lending arrangement with PaineWebber on the terms described in the application.

requested in the application and further action by the Boards, to reimbursement for specific expenses that it incurs as lending agent for Affiliated Funds.[2]

5. In connection with the establishment of a securities lending program, the Board of a Fund, including a majority of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, has established or, for Affiliated Funds that have not yet commenced securities lending, will establish procedures to govern the program. These procedures do or will comply with the positions set forth by the Commission and its staff in no-action letters and require specific guidelines relating to the creditworthiness of borrowers and of issuers from whom an Affiliated Fund may accept irrevocable letters of credit as collateral.

6. Mitchell Hutchins and PaineWebber proposed that each Affiliated Fund engage a lending agent for the Fund, and the Boards approved the retention of PaineWebber as lending agent. PaineWebber, as lending agent, is responsible for soliciting borrowers, monitoring daily the value of the loaned securities and collateral, requesting that borrowers add to the collateral when required by the loan arrangements and performing other administrative functions in connection with each Affiliated Fund's securities lending program. PaineWebber enters into loans with pre-approved borrowers on terms the parameters of which are pre-approved by the Fund's investment adviser or sub-adviser. Although not currently contemplated, PaineWebber may invest cash collateral for the loans in instruments pre-approved by such investment adviser or sub-adviser.

7. The duties of PaineWebber as lending agent for an Affiliated Fund are included in a lending agency agreement. Procedures governing determination of the borrowers and acceptable investment instruments have been adopted by the Boards and the relevant investment advisers and sub-advisers. The investment adviser or sub-adviser monitors PaineWebber's activities as lending agent to ensure that securities loans are effected in accordance with the adviser's or sub-adviser's instructions and within the procedures adopted by the relevant Board.

8. Although PaineWebber acts as both investment adviser and lending agent to certain Affiliated Funds, the personnel providing day-to-day lending agency services to the Funds do not provide investment advisory services to the Funds and are completely separate and distinct from those PaineWebber personnel who provide investment advisory services to the Funds. PaineWebber's activities as lending agent are conducted under the supervision of investment management personnel as each Fund's investment adviser or sub-adviser, who are not in any way involved in PaineWebber's lending agency operations. None of the lending representatives in PaineWebber's securities lending department participates in any way in the selection of portfolio securities or any other aspects of the management of the Affiliated Funds.

9. Ultimate responsibility for determining which specific securities are available to be loaned and to whom the securities may be loaned resides with the investment adviser or sub-adviser for each Affiliated Fund, subject to the parameters set forth in the procedures approved by each Affiliated Fund's Board. Each Affiliated Fund's investment adviser or sub-adviser notifies the lending agent as to which securities are or are not available to be loaned and approves a list of approved borrowers to whom each Affiliated Fund may lend its securities. PaineWebber provides the investment adviser or sub-adviser with a list of lending transactions for each Fund on a periodic basis. In addition, under the lending agency agreement, each Fund retains full discretion and power to prevent any loan from being made or to terminate any loan once made. The investment adviser or sub-adviser are required to terminate loans as necessary in order to vote proxies with respect to material matters affecting the issuer of the securities on loan. The duties to be performed by PaineWebber as lending agent for each Affiliated Fund are consistent with and do not exceed the parameters set forth in *Norwest Bank, Minnesota, N.A.* (May 25, 1995), except to the extent that the SEC staff should later modify such parameters.

10. Each borrower of an Affiliated Fund's securities is required to tender collateral to be held by the Fund's custodian or sub-custodian in the form of cash, securities issued or guaranteed by the United States Government, its agencies, or instrumentalities (''U.S. Government securities''), or irrevocable letters of credit issued by certain approved banks or such other collateral that may be acceptable collateral for the Fund in accordance with present and future applicable positions of the SEC staff. The borrower delivers collateral to the Fund's custodian or sub-custodian equal to at least 100% of the securities loan which collateral is supplemented to cover differences between the value of the collateral and the market value of the loaned securities as necessary.

11. When the collateral consists of U.S. Government securities or letters of credit, PaineWebber typically negotiates on behalf of the Affiliated Fund a lending fee to be paid by the borrower to the Fund. The beneficial ownership of the collateral remains with the borrower, as does the right to the income earned where the collateral consists of U.S. Government securities. At the termination of a loan, the borrower pays the lending fee to the Fund, and PaineWebber will receive a pre-negotiated percentage of the fee.

12. When the collateral consists of cash, the Affiliated Fund, instead of receiving a separate lending fee, typically receives a portion of the return earned on the investment of the cash collateral by or under the direction of the Fund's investment adviser or sub-adviser. Depending on the arrangements negotiated with the borrower by PaineWebber, a percentage of the return on the investment of the cash collateral may be remitted by the Fund to the borrower. Out of amounts earned on the investment of the cash collateral, the borrower is first paid the amount agreed upon, if any, and then, out of any remaining earnings, PaineWebber receives a pre-negotiated percentage. In the cash collateral scenario, the Affiliated Fund bears the risk of loss of the collateral.

13. Applicants propose that each Fund adopt the following procedures to ensure that the fee arrangement and other terms governing the relationship with PaineWebber, as lending agent, will be fair:

a. In connection with the approval of PaineWebber as lending agent for an Affiliated Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the directors/trustees who are not ''interested persons'' within the meaning of the Act) will determine that: (i) the contract with PaineWebber is in the best interests of the Affiliated Fund and its shareholders; (ii) the services to be performed by PaineWebber are required by the Affiliated Fund; (iii) the nature and quality of the services provided by PaineWebber are at least equal to those provided by others offering the same or similar services; and (iv) the fees for PaineWebber's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

[2] Applicants have not sought and are not seeking exemptive relief with respect to the specific lending activities to be undertaken by PaineWebber or with respect to the expense reimbursement arrangement recently approved by the Boards.

b. Each Affiliated Fund's contract with PaineWebber for lending agency services will be reviewed annually and will be approved for continuation only if a majority of the Board of each Fund (including a majority of the directors who are not interested persons) makes the findings referred to in paragraph a. above.

c. In connection with the approval of PaineWebber as lending agent for an Affiliated Fund and initial implementation of the proposed fee arrangement, the Board will obtain competing quotes regarding lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph a. above.

d. The Board, including a majority of the directors who are not interested persons, will (i) determine at each quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth herein, and (ii) review no less frequently than annually the conditions and procedures set forth herein for continuing appropriateness.

e. Each Affiliated Fund Portfolio will (i) maintain and preserve permanently in an easily accessible place a written copy of the conditions and procedures (and modifications thereto) described in the application or otherwise followed in connection with lending securities, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was in accordance with the procedures set forth above and the conditions to the application.

14. Applicants request an order, pursuant to section 17(d) of the Act and rule 17d–1 thereunder, to the extent necessary to permit an Affiliated Fund to pay, and PaineWebber to accept, fees in connection with PaineWebber's acting as lending agent in the manner and subject to the conditions and procedures described in the application.

Applicants' Legal Analysis

1. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, such investment adviser. Under section 2(a)(3), PaineWebber, as an investment adviser to certain Affiliated Funds, is an affiliated person of such Funds. In addition, PaineWebber, which owns all of the outstanding stock of Mitchell Hutchins, is an affiliated person of Mitchell Hutchins. Since Mitchell Hutchins is an affiliated person of certain Affiliated Funds by virtue of its position as an investment adviser of such Portfolios, PaineWebber may thereby be deemed an affiliated person of an affiliated person of such Funds.

2. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which such investment company is a joint participant, unless an application regarding such joint enterprise or other joint arrangement or profit-sharing plan has been filed with the SEC and has been granted by an order of the SEC. Rule 17d–1 provides that, in passing upon any such application, the SEC will consider whether the participant of such registered investment company in such joint enterprise or joint arrangement or profit-sharing plan is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of the other participants. To the extent that PaineWebber's proposed activities as lending agent for the Funds in return for a share of the revenue generated thereby may be deemed a joint enterprise or profit sharing plan, applicants believe that such activities would be prohibited by section 17(d) and rule 17d–1.

3. Applicants believe that the basic policy underlying section 17(d) is to prevent affiliates of investment companies from taking advantage of their relationship and to otherwise regulate potential conflicts of interest between an investment company and its affiliates. Applicants submit that the potential for conflict arises in connection with negotiating the percentage split of the lending fee between the lending agent and an Affiliated Fund. Applicants believe that the procedures to be adopted by each Fund with respect to the Fund's employment of PaineWebber as lending agent will ensure the fairness of the fee arrangement and other terms governing this relationship. Applicants note that the proposed conditions and procedure place reliance on the directors who are not interested persons of each Affiliated Fund to determine that the lending arrangements are fair and reasonable and in the best interests of each Fund and it shareholders. Applicants believe that such conditions and procedures will fully protect each Affiliated Fund's shareholders from the conflicts contemplated by section 17(d) and rule 17d–1.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. No Affiliated Fund may lend its portfolio securities to a borrower that is an affiliated person of the Fund or an affiliated person of an affiliated person of such Fund.

2. Except as set forth in the application, the securities lending program of each Affiliated Fund will comply with all present and future applicable SEC staff positions regarding securities lending arrangements, *e.g.*, with respect to the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other distributions, and compliance with fundamental policies.[3]

3. The approval of each Affiliated Fund's Board, including a majority of directors who are not ''interested persons'' under the Act, shall be required for the initial and subsequent approvals of PaineWebber's service as lending agent for each Affiliated Fund, for the institution of all procedures relating to the securities lending program of the Affiliated Fund, and for any periodic review of loan transactions for which PaineWebber acted as lending agent.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5916 Filed 3–10–97; 8:45 am]

BILLING CODE 8110–01–M

[3] *See, e.g.,* SIFE Trust Fund (pub. avail. Feb. 17, 1982).

[Release No. 34–38365; File No. SR–MSRB–97–2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

March 5, 1997.

On February 21, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–2), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. 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 Board is filing herewith a notice of interpretation concerning rule G–37 on political contributions and prohibitions on municipal securities business (hereafter referred to as ''the proposed rule change'').

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 7, 1994, the Commission approved rule G–37, concerning political contributions and prohibitions on municipal securities business.[3] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board has published prior notices of interpretation which set forth general guidance on rule G–37.[4] In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G–37 and, from time to time, will publish additional notices of interpretations, as necessary.[5] In light of questions recently received from market participants concerning the activities a dealer may engage in with an issuer while subject to a prohibition on municipal securities business with that issuer, the Board has determined that it is necessary to provide further guidance to the municipal securities industry. Accordingly, the Board is publishing this notice of interpretation.

(b) The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[3] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[4] *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 11–16; Vol. 14; No. 4 (August 1994) at 27–31; Vol. 14, No. 5 (December 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3–4; Vol. 16, No. 1 (January 1996) at 31; and Vol. 16, No. 3 (September 1996) at 35–36. *See also* CCH Manual paragraph 3681.

[5] Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994) [File No. SR–MSRB–94–6]; Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (Aug. 31, 1994) *corrected* Securities Exchange Act Release No. 34603 (Aug. 25, 1994), 59 FR 46479 (Sept. 8,. 1994) [File No. SR–MSRB–94–15].

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act,[6] which renders the proposed rule change effective on February 21, 1997, the date of receipt of this filing by the Commission.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No.

[6] 15 U.S.C. 78s(b)(3)(A).

SR–MSRB–97–2 and should be submitted by April 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5981 Filed 3–10–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38366; File No. SR–MSRB–97–1]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Delivery of Official Statements to the Board

March 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change (File No. SR–MSRB–97–1). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. 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 Board is filing a proposed rule change to rule G–36 and Form G–36(OS), relating to delivery of official statements to the Board (hereafter referred to as the ''proposed rule change''), which updates the citation to SEC Rule 15c2–12 in rule G–36 to correspond to the recently revised subsection of that Rule and which makes clear that limited placements only are exempt from rule G–36.

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board 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

Board rule G–36 requires that managing underwriters deliver to the Board copies of final official statements for most primary offerings of municipal securities, if an official statement was prepared. Rule G–36 also requires Form G–36(OS) to be sent with the official statement. The Board enters the official statement into the Municipal Securities Information Library® (''MSIL®'') System.[3] Rule G–36 applies to all primary offerings with official statements, except for limited placements that are exempt under SEC Rule 15c2–12(d)(1)(i).

Rule G–36 and Form G–36(OS) contain cross-references to SEC Rule 15c2–12. The proposed rule change to rule G–36(c)(iii) and Form G–36(OS) updates the citation to Rule 15c2–12 to correspond to the recently revised subsection of Rule 15c2–12 and makes clear that limited placements only are exempt from rule G–36.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for thirty days from February 20, 1997, the date on which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(e)(6)[5] thereunder. In particular, the Commission believes the proposal would qualify as a ''non-controversial filing'' in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–1 and should be submitted by April 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The MUNICIPAL SECURITIES INFORMATION LIBRARY and MSIL are registered trademarks of the Board.

[4] 15 U.S.C. § 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(6).

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–5982 Filed 3–10–97; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–38360; File No. SR–NASD–97–15]

March 4, 1997.

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Amendments to the Corporate Financing Rule, The Nasdaq Stock Market Rules, and Over-the-Counter Bulletin Board Rules To Effect Compliance With SEC Regulation M

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change and Amendment No. 1. The proposed rule change and Amendment No. 1 are described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change and Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Corporate Financing Rule in Rule 2710, The Nasdaq Rules, and the Over-the-Counter Bulletin Board Rules of the Association to effect compliance with the Commission's Regulation M. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements—(1) through (10) No change.

(11) Request for Underwriting Activity Report. Notwithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject or reference security that is subject to SEC Rule 101 shall submit a request to the Corporate Financing Department for an Underwriting Activity Report with respect to the subject and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related Rules of the Association. The request shall be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under SEC Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriter of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumed responsibility for compliance with this subparagraph. For purposes of this subparagraph, SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: ''distribution,'' ''distribution participant,'' ''reference security,'' ''restricted period,'' and ''subject security.''

(c) No change.

4000. The Nasdaq Stock Market

4200. Definitions

(*a*) For purposes of the Rule 4000 Series, unless the context requires otherwise:

[(a)–(x)] *(1)–(23)*

[(y) ''Penalty bid'' means a stabilizing bid that permits the managing underwriter to reclaim a selling concession granted to a syndicate member in connection with the sale of securities in an underwritten offering when the syndicate member resells such securities to the managing underwriter.]

[(z) ''Pre-effective stabilizing bid'' means a stabilizing bid entered prior to the effective date of an offering.]

[(aa)] *(24)* ''Reported security'' means an equity security for which quotations are entered into the Consolidated Quotations Service.

(25) ''SEC Rule 100'', ''SEC Rule 101'', ''SEC Rule 103'', and ''SEC Rule 104'' mean the rules adopted by the Commission under Regulation M, and any amendments thereto.

[(bb)] *(26)* ''Solicitation expenses'' means direct marketing expenses incurred by a member in connection with a limited partnership rollup transaction, such as telephone calls, broker/dealer fact sheets, members' legal and other fees related to the solicitation, as well as direct solicitation compensation to members.

[(cc)] *(27)* ''Stabilizing bid'' means [a bid entered for the purpose of supporting the price of a security to facilitate an offering of such security as permitted by SEC Rules 10b–6 and 10b–7.] *the terms ''stabilizing'' or to ''stabilize'' as defined in SEC Rule 100.*

[(dd)] *(28)* ''Transaction costs'' means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

(29) ''Underwriting Activity Report'' is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject to SEC Rule 101 pursuant to Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b) For purposes of Rules 4614, 4619, and 4623, the following terms shall have the meanings as defined in SEC Rule 100: ''affiliated purchaser,'' ''distribution,'' ''distribution participant,'' ''independent bid,'' ''net purchases,'' ''passive market maker,'' ''penalty bid,'' ''reference security,'' ''restricted period,'' ''subject security,'' and ''syndicate covering transaction''.

4600. Nasdaq Market Maker Requirements

4614. Stabilizing Bids

(a) [Eligibility.]

[A market maker may enter a stabilizing bid in Nasdaq, which bid will be identified with the appropriate identifier on the Nasdaq quotation display.]

Market Maker Obligation/Identifier

A market maker that intends to stabilize the price of a Nasdaq security that is a subject of reference security under SEC Rule 101 shall submit a request to Nasdaq Market Operations

for the entry of a one-sided bid that is identified on Nasdaq as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

(b) Eligibility

Only one market maker in an issue may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids

(1) A stabilizing bid [will] *shall* not be [displayed] *entered in Nasdaq* unless *at least* one *other* market maker in addition to the market maker entering the stabilizing bid is registered *as a market maker* in the [issue] *security* and enter[s]*ing* quotations *that are considered an independent bid under SEC Rule 104.*

([b]*2*) [Character.]

[A stabilizing bid, pre-effective stabilizing bid, or a penalty bid may be entered in Nasdaq.] A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.

(3) A market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the security.

([c]*d*) [Notice] *Submission of Request* to Association

(1) A market maker that wishes to enter a stabilizing bid shall [so notify the] *submit a request to* Nasdaq Market Operations [in writing prior to the first day on which the stabilizing bid is to appear in Nasdaq] *for the entry in the Nasdaq quotation display of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the end of the day on which the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq Market Operations that includes the information required by subparagraph (d)(2).* [and the fact that the market maker is a manager of the distribution.]

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), [T] the *market maker may provide written* [notice] *confirmation to Nasdaq Market Operations that* shall include*:*

(A) the [name] *identity* of the security and its Nasdaq symbol;

(B) [the date on which the security's registration will become effective, if it is already included in Nasdaq] *the contemplated effective date of the offering and the date when the offering will be priced;*

[(C) whether the stabilizing bid will be a penalty bid or a penalty-free bid]

(C) the date and time that an identifier should be included on the Nasdaq quotation display; and

(D) a copy of the *cover page of the* preliminary *or final* prospectus [or shelf registration statement] *or similar offering document,* unless the Association determines otherwise.

[(2) In the case of a pre-effective stabilizing bid, the notice shall include (A) the name of the security and its Nasdaq symbol; (B) the contemplated effective date of the offering; (C) whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and (D) a copy of the preliminary prospectus, unless the Association determines otherwise.]

[(3) A market maker that has provided the written notice prescribed above shall also contact Nasdaq Market Operations for authorization on the day the market maker wishes to enter the stabilizing bid.]

[(d) Dual Bids in the Same Issue. A market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the issue.]

[(e) Volume Reporting for Stabilizing Bids. A market maker entering a stabilizing bid shall report all purchases made on the stabilizing bid and enter ''zero volume'' for sales during the period in which the stabilizing bid is in effect.]

4619. Withdrawal of Quotations and Passive Market Making

(a)–(c) No change.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant *(or, in the case of excused withdrawal status, an affiliated purchaser)* in order to comply with SEC Rules [10b–6] *101,* [or Rule 10–6A] *103, or 104* under the Act on the following conditions:

(1) A [market maker] *member* acting as a manager (or in a similar capacity) of a distribution *of a Nasdaq security that is a subject or reference security under SEC Rule 101 and any member that is a distribution participant or that is an affiliated purchaser in such a distribution that does not have a manager* shall [: (A)] provide written notice to Nasdaq Market Operations [of the prospective distribution] *no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.*

[and the fact that the market maker is a manager of the distribution, the Nasdaq security or securities that are subject to SEC Rule 10b–6 no later than 5 business days following the filing of a registration statement with the Association pursuant to Rule 2710, or, if the member is not required to file the registration statement with the Association, no later than 5 business days following the filing of offering documents with the appropriate regulatory authority; and, (B) no later than noon Eastern Time on the business day prior to the beginning of the cooling off period:]

[(i)] *(A)* [request] *The notice required by subparagraph (d)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to* withdraw[al of] the market maker[s']*'s* quotations, or [identification of] *that includes a request on behalf of each market maker that is a distribution participant that its* [the market makers'] quotations *be identified* as those of a passive market maker [by providing written notice to Nasdaq Market Operations of the identity of the market makers that are distribution participants], *and includes* the contemplated date and time of the commencement of the [cooling off period] *restricted period.* [and the identity of the market makers that intend to act as passive market makers; and]

[(ii)] *(B) The managing underwriter shall* advise [the] *each* market maker that [they have] *it has* been identified as *a* distribution participant[s] *or an affiliated purchaser* to Nasdaq Market Operations and that [their] *its* quotations will be automatically withdrawn or identified as passive market maker quotations, [upon the request made by the manager] unless [they submit to] *a market maker that is a distribution participant notifies* [the Association the notice specified in] *Nasdaq Market Operations as required by* subparagraph [(3)] *(d)(2),* below.

[(2) If the security is being distributed pursuant to an offering for which no registration statement or offering document is required to be filed, each market maker that is a distribution participant shall, no later than noon Eastern Time on the business day prior to the beginning of the cooling off period, provide written notice to Nasdaq Market Operations of its participation in the distribution, the contemplated date and time of the commencement of the cooling off period, the Nasdaq security or securities that are subject to SEC Rule 10b–6, and request withdrawal of its quotations or identification as a passive market maker.]

([3] *2*) A market maker that has been identified to Nasdaq Market Operations as a distribution participant shall [provide written notice to] *promptly notify* Nasdaq Market Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker [no later than 4:00 p.m. Eastern Time on the business day prior to the beginning of the cooling off period] in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker*, or in order to have its excused withdrawal status rescinded.*

(3) If a market maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq Market Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit the Association from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq Market Operations to obtain an excused withdrawal as required by subparagraphs (a) and (d) of this Rule.

(4) [In the event the manager of a distribution is not a market maker, each market maker that is a distribution participant shall comply with paragraph (d)(1) unless another market maker has assumed responsibility for compliance.] *The quotations of a passive market maker shall be identified on Nasdaq as those of a passive market maker.*

[For purposes of this Rule, the term ''cooling off period'' refers to the periods specified in SEC Rule 10b–6(a)(4)(xi), the terms ''distribution'' and ''distribution participant'' refers to these terms as defined in SEC Rule 10b–6(c)(5) and (c)(6) and the term ''passive market maker'' refers to this term as defined in SEC Rule 10b–6A(T).]

* * * * *

4623. Penalty Bids and Syndicate Covering Transactions

(a) A market maker acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A market maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

(1) the identity of the security and its Nasdaq symbol;

(2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions; and

(3) the amount of the syndicate short position, in the case of syndicate covering transactions.

(c) Notwithstanding paragraph (a), a market maker may request that its quotation be identified as a penalty bid on Nasdaq display by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identifier should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the end of the day on which the penalty bid identifier is entered on Nasdaq.

(d) The written notice required by paragraphs (a) and (c) of this Rule may be submitted on the Underwriting Activity Report by including the information required by subparagraphs (b)(1) and (b)(2) or paragraph (c).

6500. OTC Bulletin Board Service

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries

(A)–(C) No change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB–eligible security that is the subject or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) provide written notice to Nasdaq Market Operations prior to the pricing of the distribution that includes the intended date and time of the pricing of the offering;

(ii) Withdraw all quotations in the OTCBB–eligible security to comply with the applicable restricted period under SEC Rule 101 and not enter a stabilizing bid pursuant to SEC Rule 104 in the OCTBB; and

(iii) provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur and the amount of the syndicate short position.

(E) The written notice required by subparagraphs (b)(1)(D)(i) and (iii) of this rule may be submitted on the Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, Inc. by including the information required by those subparagraphs.

(F) For purposes of subparagraph (D), SEC Rules 100, 101, 103 and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: ''affiliated purchaser,'' ''distribution,'' ''distribution participant,'' ''penalty bid,'' ''reference security,'' ''restricted period,'' ''stabilizing,'' ''subject security,'' and ''syndicate covering transaction.''

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation, Inc. (''NASD Regulation'') 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 test of these statements may be examined at the places specified in Item III below. NASD Regulation 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

(a) On December 20, 1996, the Commission approved new Regulation M to replace Rules 10b–6, 10b–6A, 10b–7, 10b–8 and 10b–21 under the Act (the ''trading practice rules'').[1] Regulation M, which consists of SEC Rules 100 through 105, governs the activities of underwriters, issuers, selling security-holders, their respective affiliated purchasers, and others that have an interest in the outcome of an offering of securities. New Regulation M will be effective March 4, 1997, with the

[1] Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997).

exception that the Commission's recordkeeping requirements related to penalty bids and syndicate covering transactions will become effective April 1, 1997.

The NASD is proposing to amend the rules of The Nasdaq Stock Market (''Nasdaq''), the Over-the-Counter Bulletin Board (''OTCBB''), and the Corporate Financing Rule (NASD Rule 2710) (collectively ''NASD rules'') to clarify certain of the provisions and to implement the requirements of Regulation M in SEC Rules 101, 103, and 104 as they apply to members of the Association. In general, the amendments to the NASD rules establish a new requirement for members to obtain an Underwriting Activity Report from the Corporate Financing Department of NASD Regulation with respect to a proposed distribution subject to SEC Rule 101; modify current Nasdaq requirements with respect to the entry of stabilizing and penalty bids and requests for excused withdrawal of quotations or designation of quotations as those of a passive market maker; and establish new requirements for notification with respect to penalty bids and syndicate covering transactions for Nasdaq and OTCBB securities.

General

The NASD is proposing to amend the Nasdaq Rules to eliminate the requirement that members submit their request to enter a stabilizing or penalty bid, for an excused withdrawal of quotations, or for the identification of quotations as those of a passive market maker on the day prior to the requested action. Further, in connection with stabilizing and penalty bids, the proposed rule change replaces the current requirement for written notification with a requirement for notification followed by written confirmation. These changes are made in order to permit the Association to respond to the quicker timetable that is increasingly characteristic of securities distributions and to, particularly, provide members the maximum flexibility required for shelf offerings.

In addition, the proposed rule change amends Nasdaq and OTCBB Rules to distinguish between the obligations of members that are distribution participants and members that are affiliated purchasers (as those terms are defined in SEC Rule 100 adopted under Regulation M). While a member that is a distribution participant may stabilize the price of a security and engage in passive market making, a member that is considered an affiliated purchaser to the issuer is not permitted to conduct these market-related activities during a distribution.

The proposed rule change also clarifies that the requirements for stabilizing, excused withdrawal, passive market making, penalty bids, and syndicate covering transactions in a Nasdaq or OTCBB security apply regardless of whether a Nasdaq or OTCBB security is the subject of the distribution or is a reference security (as those terms are defined in SEC Rule 100 adopted under Regulation M). Similarly, the requirement that a member request an Underwriting Activity Report, as discussed below, from the Corporate Financing Department of NASD Regulation applies regardless of whether a publicly traded security is a subject or reference security under SEC Rule 101. Thus, a member that is a distribution participant or an affiliated purchaser in a private placement of a security that is convertible to a publicly traded security will be required to request an Underwriting Activity Report with respect to the reference security. Moreover, if the reference security is listed on Nasdaq the member will be obligated to comply with the provisions of Rules 4614, 4619, and 4623 or if the reference security is quoted in the OTCBB, the member will be obligated to comply with the provisions of Rule 6540. The same analysis would apply if the privately placed security is the same security as that traded in the public markets.

Amendments to the Nasdaq Rules

Definitions

The proposed rule change would reorganize Rule 4200 of the NASD Rules applicable to Nasdaq into two paragraphs, with the result that the current definitions in paragraphs (a) through (dd) would be consecutively numbered as subparagraphs of paragraph (a). In addition, the Association is proposing to adopt a definition as new subparagraph (a)(25) of Rule 4200 that would clarify that references in the Nasdaq Rules to SEC Rule 100, SEC Rule 101, SEC Rule 103, and SEC Rule 104 means those rules adopted by the SEC under Regulation M, and any amendments thereto.

The definition of ''penalty bid'' in current paragraph (2) to Rule 4200 is proposed to be deleted because SEC Rule 100 adopted under Regulation M contains a definition of penalty bid. Moreover, for purposes of Rule 4614, a penalty bid will no longer be treated as a form of stabilizing bid by the NASD.

The definition of ''stabilizing bid'' in renumbered subparagraph (a)(27) is proposed to be amended to refer to the definition of ''stabilizing'' in SEC Rule 100 adopted under Regulation M. Unlike SEC Rule 104 adopted under Regulation M, the Association's rules have differentiated between a pre-effective stabilizing bid and a stabilizing bid entered after the pricing and effectiveness of an offering. The Association is deleting the definition of pre-effective stabilizing bid as unnecessary and confusing.

Moreover, the NASD is proposing to adopt, for purposes of the Nasdaq Rules, a definition of the term ''Underwriting Activity Report'' in subparagraph (a)(29) of Rule 4200 to reference the report to be provided by the Corporate Financing Department of NASD Regulation to the managing underwriter of a distribution of a publicly traded subject or reference security that is subject to SEC Rule 101. The requirement that members obtain the Report is proposed to be adopted in Rule 2710(b)(11). The Report will provide members participating in the offering with information on whether the security meets the average daily trading volume (''ADTV'') and public float value requirements for the one-day or five-day restricted periods under SEC Rule 101 and whether the ADTV of the market makers participating in the offering meet the requirements of SEC Rule 103 for passive market making. In addition, the Report permits a member to provide the requisite notifications to the NASD with respect to the member's request for excused withdrawal of quotations from Nasdaq and designation of Nasdaq quotations as those of a passive market maker, as well as information on the member's request to stabilize and, under Nasdaq and OTCBB Rules, impose a penalty bid or conduct syndicate covering transactions. Thus, the Report permits the Association to provide information to the underwriting syndicate to facilitate compliance with SEC Rules 101 and 103 and can be used by members to submit information to the Association to comply with the member's obligations under Nasdaq and OTCBB Rules and SEC Rules 101, 103 and 104.

Finally, the Association is proposing to adopt new paragraph (b) or Rule 4200 to incorporate the definitions of important terms from SEC Rule 100 adopted under Regulation M for purposes of the Nasdaq Rules, including affiliated purchase, distribution, distribution participant, independent bid, net purchases, passive market maker, penalty bid, reference security, restricted period, subject security, and syndicate covering transaction. Incorporating the SEC's definitions of these terms will avoid the need for the

Association to amend its rules as these terms are amended by the SEC.

Stabilizing Bids

SEC Rule 104 adopted under Regulation M replaces Rule 10b–7 under the Act to regulate stabilization activities during a distribution. The new rule retains the requirement that only one stabilizing bid is permitted in any market at the same price at the same time, that the market be notified of the intent to enter a stabilizing bid, and that the stabilizing bid be disclosed. Rule 4614 of the Nasdaq Rules currently includes provisions that meet the requirements of prior SEC Rule 10b–7 and new Rule 104. However, the NASD is proposing to amend Rule 4614 to clarify certain of its provisions, delete obsolete provisions, and modify the procedural requirements for notification and the information required to be submitted to Nasdaq in order for a market maker to enter a stabilizing bid.

The NASD is proposing to amend Rule 4614 of the Nasdaq Rules by adding new paragraph (a) that requires a market maker that intends to stabilize the price of a Nasdaq security in compliance with SEC Rule 104 to submit a request to Nasdaq Market Operations to enter a one-sided bid identified on Nasdaq as a stabilizing bid. Paragraph (b) retains the requirement that only one market maker in an issue may enter a stabilizing bid. Several provisions that impose limitations on stabilizing bids have been organized under a new heading in paragraph (c).

The notice provisions in renumbered subparagraph (d)(1) have been revised to permit submission to Nasdaq Market Operations of a market maker's request to enter a stabilizing bid at any time. Currently, Rule 4614 requires that Nasdaq Market Operations be notified on the day prior to the first day on which the stabilizing bid is to appear. This requirement is no longer necessary. Since a one-sided bid identified as a stabilizing bid can only be entered on Nasdaq by the staff of Nasdaq Market Operations, there is no need to set a particular time period for providing notification. System changes now permit the staff of Nasdaq Market Operations to enter a stabilizing bid with the appropriate identifier with only a short period of notification prior to the opening of the market or any other time during the trading session for the entry of the bid requested by the member. Moreover, a member may determine, and is permitted by SEC Rule 104, to enter a stabilizing bid at any time during a trading session. Thus, it is the obligation of the member to provide the staff sufficient time to enter its one-sided stabilizing bid on Nasdaq and the staff of Nasdaq Market Operations will enter a member's stabilizing bid as soon as possible after receipt of the request from the member.

The Association is also proposing to delete the requirement in subparagraph (d)(1) of Rule 4614 that the request for entry of a stabilizing bid be in writing and replace it by a requirement that the request be confirmed in writing by the end of the day of which the stabilizing bid is entered. In light of the speed at which many secondary offerings and shelf distributions are priced and distributed and the volatility of the market, the Association believes it important that members be provided the ability to move quickly in response to changing market conditions and the requirements of such offerings. The information required to be provided to the staff of Nasdaq Market Operations by subparagraph (d)(2) is easily conveyed in a conversation by telephone.

Subparagraph (d)(1) of Rule 4614 is also proposed to be amended to permit a member to provide its written request by submitting an Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, with the requisite information included in the Report that is set forth in subparagraph (d)(2). In lieu of the Underwriting Activity Report, a member is also permitted under subparagraph (d)(2) to provide written notice to Nasdaq Market Operations that contains the information related to its request to stabilize the price of a security. The information required to be included in the Underwriting Activity Report or in a separate request has been revised in order to clarify and simplify the requirements. Thus, the requirement to provide a copy of the preliminary prospectus has been replaced with a requirement to provide the cover page of the prospectus, because only the information on the cover page is necessary to Nasdaq Market Operations staff and is easily transmitted by fax to the Association.

Excused Withdrawals and Passive Market Making

Market makers are not permitted by the Nasdaq Rules to withdraw their market making quotations unless the withdrawal is excused. In the absence of obtaining an excused withdrawal, a member is prohibited by Nasdaq Rules from acting as a market maker in the security for 20 business days. Rule 4619 of the Nasdaq Rules regulates requests for excused withdrawals of quotations by market makers and the request by market makers for identification of their quotations as those of a passive market maker.

SEC Rule 101 adopted under Regulation M has replaced the current ''cooling-off'' periods of Rule 10b–6 that are triggered by the anticipated commencement of the distribution with a three-tier ''restricted period'' that is calculated from the time of pricing the subject security. Actively-traded securities, i.e., securities with an ADTV of at least $1 million and a public float value of at least $150 million, are no longer subject to any restricted period. Securities with an ADTV of at least $100,000, with a public float value of at least $25 million, are subject to a restricted period of one business day prior to the date on which the subject security's price is determined and all other securities that do not meet the ADTV and public float value tests are subject to a restricted period of five business days.

SEC Rule 103 adopted under Regulation M, which replaces Rule 10–6A under the Act, permits ''passive'' market making activity in Nasdaq stocks in connection with fixed-price offerings that are underwritten on a firm-commitment basis and permits all Nasdaq stocks to qualify for passive market making. The new SEC rule also allows passive market making throughout the restricted period, in contrast to Rule 10b–6A, which prohibited passive market making upon the commencement of offers and sales.

The NASD is proposing to revise Rule 4619 in subparagraph (d)(1) to: (1) Distinguish between the obligations of a member that is a distribution participant and a member that is an affiliated purchaser; (2) clarify that the primary obligation to obtain excused withdrawal and/or identification of quotations as those of a passive market maker is imposed on the managing underwriter of the distribution, regardless of whether the managing underwriter is also a Nasdaq market maker in the security; (3) clarify that the rule applies regardless of whether the Nasdaq security is a subject or reference security; (4) replace the cooling-off periods of Rule 10b–6 with the one-day and five-day restricted periods of SEC Rule 101; and (5) clarify that passive market making quotations must be identified on Nasdaq.

In addition, the amendments to subparagraph (d)(1) of Rule 4619 provide that notification to Nasdaq Market Operations must occur no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC

Rule 101 of Regulation M. This amendment deletes the provision that previously required notification to Nasdaq Market Operations by noon Eastern Time on the business day prior to the beginning of the cooling-off period. It is anticipated that members will provide notification as follows: If a one-day restricted period commences at the close of Nasdaq at 4:00 p.m. (ET) on Monday, notice should be provided to Nasdaq Market Operations with respect to excused withdrawal or passive market making status for Tuesday by 6:00 p.m. on Monday, with the offering being priced and sold after 4:00 p.m. (ET) on Tuesday. The five-day restricted period is calculated in a similar manner.[2] The provision permits notification to be received later than the day prior to the first entire trading session of the restricted period if such later notification is necessary under the specific circumstances, so long as the Association will be able to maintain its regulatory program to provide surveillance of excused withdrawals and passive market making.

Subparagraph (d)(1) of Rule 4619 continues to require that a member submit in writing its request for excused withdrawal or identification of quotations as those of a passive market maker. The request is required under subparagraph (d)(1)(A) to be submitted in the form of the Underwriting Activity Report that is obtained from the Corporate Financing Department of NASD Regulation pursuant to a proposed rule change to Rule 2710(b)(11). As set forth above, the Underwriting Activity Report will be issued to the managing underwriter of every distribution of a publicly traded subject or reference security that is subject to SEC Rule 101 and will provide ADTV information that will facilitate compliance by the underwriting syndicate with the restricted periods of SEC Rule 101 and the passive market making requirements of SEC Rule 103.

Subparagraph (d)(1)(A) of Rule 4619 requires that the Underwriting Activity Report that was previously provided to the managing underwriter by the Corporate Financing Department be submitted to Nasdaq Market Operations and include the managing underwriter's request on behalf of each market maker that is a distribution participant or an affiliated purchaser that the quotations of the market maker be withdrawn. Alternatively, with respect to distribution participants, the managing underwriter may request that the quotations of the market maker be identified as those of a passive market maker.

Subparagraph (d)(1)(B) of Rule 4614 will continue to require that the managing underwriter then advise each market maker that is a distribution participant or affiliated purchaser that its quotations will be automatically withdrawn. In addition, market makers that are distribution participants must be advised if their quotations will be identified as those of a passive market maker. A market maker that is a distribution participant has the option to notify Nasdaq Market Operations, pursuant to subparagraph (d)(2), that it does not intend to be a participant in the distribution or does not intend to engage in passive market making.

Subparagraph (a) of Rule 4619 requires that the market maker request withdrawal of its quotations for any purpose, including compliance with Regulation M, through Nasdaq Market Operations. The action of a market maker to withdraw its quotations from Nasdaq is treated as unexcused and is subject to the 20-day penalty. In considering a member's obligations to comply with new Regulation M, the Association has determined that it should revise its procedures and rules to facilitate members' compliance with the restricted periods, and restrictions on stabilizing and passive market making—without the member being subject to the 20-day penalty for taking an action intended to ensure compliance with its regulatory obligations.

The NASD is, therefore, proposing to adopt new subparagraph (d)(3) of Rule 4619 to permit the Association to treat as an excused withdrawal the action of a market maker to withdraw its quotations, if the withdrawal is necessary to ensure compliance with its obligations as a stabilizer, passive market maker, or to comply with the restricted periods of SEC Rule 101. Thus, this provision will permit a member that exceeds its ''net purchases'' limitation as a passive market maker to immediately withdraw its quotations. In addition, the provision would permit a member to immediately withdraw a stabilizing bid and would treat as an excused withdrawal the immediate withdrawal of quotations to comply with the one or five-day restricted periods of Regulation M. Finally, the provision also requires that the market maker immediately notify Nasdaq Market Operations of its action. In order, however, to ensure that members understand that they remain obligated to request withdrawal of their quotations through Nasdaq Market Operations and should only rely on this provision in an unanticipated situation, the provision clarifies that the granting of such an excused withdrawal does not prevent the Association from taking such action as is necessary (including, initiating a disciplinary action) against the member and its associated persons for failure to comply with the requirement of Rule 4619 to withdraw quotations through Nasdaq Market Operations.

Penalty Bids and Syndicate Covering Transactions

New SEC Rule 104 adopted under Regulation M requires that the primary market for a security be notified on any penalty bid or syndicate covering transaction in connection with an offering of securities. Paragraph (a) of new Rule 4623 of the Nasdaq Rules would require submission of this notification to the Corporate Financing Department of NASD Regulation with respect to a Nasdaq security prior to imposing the penalty bid or engaging in the first syndicate covering transaction. The written notification is required under paragraph (b) to include the identity of the security and its Nasdaq symbol, the date and time the member is intending to impose the penalty bid and/or conduct syndicate covering transactions, and a statement of the amount of the syndicate short position. If the SEC delays effectiveness of the notification requirements for penalty bids and syndicate covering transactions to a future date, the effectiveness of this provision will also be delayed until that date.

Although not required by SEC Rule 104, a market maker has the option to request that Nasdaq Market Operations include an identifier with respect to a penalty bid in order to advise the market of the member's exercise of its contractual right. Where a member requests that its quotations be identified as a penalty bid, paragraph (c) under Rule 4623 requires that the member must provide notification to Nasdaq Market Operations (not the Corporate Financing Department) and, if the notice is not in writing, must confirm the notice in writing no later than the end of the day on which the penalty bid identifier is entered in Nasdaq. The requirements of this provision will be effective March 4, 1997.

Finally, paragraph (d) under Rule 4623 permits, but does not require, a member to provide the notification required under paragraphs (a) and (c) by submitting an Underwriting Activity Report that includes the requisite information.

[2] *See* definition of ''business day'' in SEC Rule 100 for purposes of calculating the restricted period under SEC Rule 101. The term ''business day'' for purposes of the Nasdaq Rules refers to a calendar day on which trading occurs on Nasdaq.

Amendments to OTCBB Rules

The OTCBB system does not include a feature that permits the entry of an identifier in connection with a member's quotations in the system. Therefore, a member that is a distribution participant or an affiliated purchaser with respect to an OTCBB-eligible security in which it is entering quotations cannot engage in stabilizing transactions in that security in the OTCBB and cannot request identification of its post-offering bid as a penalty bid.

The NASD is proposing to amend subparagraph (b)(1) of rule 6540 of the OTCBB Rules to require that a member that is to be a distribution participant or is an affiliated purchaser in a distribution of OTCBB-eligible securities subject to SEC Rule 101 must provide written notice to Nasdaq Market Operations prior to the pricing of the offering that includes the intended date and time of pricing of the offering—unless another member assumes responsibility for the member's compliance. In addition, the member must withdraw its quotations to comply with the restricted periods of Regulation M, and is prohibited from entering a stabilizing bid in the OTCBB.

Moreover, similar to the new requirements in Rule 4623 with respect to Nasdaq securities, the member is required under rule 6540 to provide written notice to the Corporate Financing Department of NASD Regulation of its intention to impose a penalty bid or engage in syndicate covering transactions prior to imposing the penalty bid or engaging in the first syndicate covering transactions. In the latter case, the member is required to provide advice on the amount of the syndicate short position. If the SEC delays effectiveness of the notification requirements to a future date, the notification regarding penalty bids and syndicate covering transactions under rule 6540 will also be delayed until that date.

Finally, the NASD is proposing that members be permitted, but not required, to provide the notice to Nasdaq Market Operations or the Corporate Financing Department, as required by the new provisions, by submitting an Underwriting Activity Report that includes the requisite information.

Amendments to the Corporate Financing Rule

As set forth above, a member that is a market maker in a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 adopted under Regulation M, is required to request excused withdrawal of its quotations or identification of its quotations as those of a passive market maker by submitting information in an Underwriting Activity Report that is provided by the Corporate Financing Department of NASD Regulation. Moreover, a member has the option to use the Underwriting Activity Report to request the entry of a stabilizing bid for a Nasdaq security, or to provide advice of the member's intention to enter a penalty bid or to engage in syndicate covering transactions for a Nasdaq or OTCBB security, or to request an identifier be associated with the member's penalty bid in Nasdaq. The Underwriting Activity Report has previously been used, with the title of ''Passive Market Making Report,'' by the Corporate financing Department to provide information to Nasdaq market makers as to whether the security met the price and float requirements for the two-day or nine-day cooling-off periods under rule 10b–6 and whether the ADTV of the market makers participating in the offering met the requirement for passive market making under Rule 10b–6A.

The NASD is proposing to expand the use of the Underwriting Activity Report to permit the Association to provide information to members (not just Nasdaq market makers) to assist them in complying with the restricted periods of SEC Rule 101. Thus, the Association intends to calculate the ADTV for each subject and reference security that is publicly traded prior to an offering to determine, and to so advise the managing underwriter, whether the security qualifies under SEC Rule 101 as a actively-traded security or for the one-day or five-day restricted periods. The NASD is intending to provide members the option of using the Underwriting Activity Report to submit the member's request to stabilize a Nasdaq security, provide notification of the member's intent to impose a penalty bid or conduct syndicate covering transactions with respect to Nasdaq securities, and to request an identifier be associated with a penalty bid in a Nasdaq security. In addition, a member may use the Underwriting Activity Report to provide the notification of an offering and of its intention to impose a penalty bid or conduct syndicate covering transactions with respect to OTCBB securities.

The NASD is proposing to amend the filing requirements of the Corporate Financing Rule in Rule 2710 to add new subparagraph (b)(11) that would require that a member acting as a manager (or in a similar capacity) of a distribution of securities subject to SEC Rule 101 submit a request to the Corporate Financing Department for an Underwriting Activity Report. If no member is acting as managing underwriter, each member that is a distribution participant or an affiliated purchaser is required to submit the request unless another member has assumed responsibility for compliance with the requirement.

The request must be submitted with respect to any security considered a subject or reference security under SEC Rule 101 that is publicly traded. Thus, the requirement to request an Underwriting Activity Report applies to follow-on or secondary distributions of a publicly traded security (*i.e.*, the publicly traded security is the subject security under SEC Rule 101) and to publicly traded securities that are reference securities in a distribution subject to SEC Rule 101. The latter situation would arise where a private placement is proposed of a security for which a publicly traded security is a reference security. In this case, distribution participants and affiliated purchasers would be subject to compliance with SEC Rule 101 with respect to the publicly traded security. In addition, it is important to note, that the requirement to request an Underwriting Activity Report applies to every offering regardless of whether the subject or reference security is listed on Nasdaq, quoted in the OTCBB, traded in the non-Nasdaq over-the-counter market, or listed on a stock exchange. Finally, the requirement to submit a request for an Underwriting Activity Report applies regardless of the availability of an exemption from filing of a public offering in subparagraph (b)(7) of the Corporate Financing Rule in Rule 2710.

Proposed subparagraph (b)(11) of Rule 2710 states that the purpose of the request for the Underwriting Activity Report is to facilitate compliance with SEC Rules 101, 103, and 104 and other distribution-related rules of the Association. Such other rules include the Free-Riding and Withholding Interpretation in IM–2110–1 and the directed commissions provision of Rule 2740. The proposed provision requires that the request be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency. If no offering document is required to be filed with a regulatory agency, the request must be submitted at least two business days prior to the commencement of the restricted period under SEC Rule 101.

Transmission of Regulatory Notices Under Regulation M

NASD Regulation is proposing to standardize the information content of notices required to be submitted under SEC Rules 101, 103, and 104, *i.e.*, notification of withdrawal of quotations, identification of quotations as those of a passive market maker, request for entry of a stabilizing bid, and notification of penalty bids and syndicate covering transactions. The individual notices are required to be submitted to Nasdaq Market Operations or the Corporate Financing Department, as applicable, as an attachment to the Underwriting Activity Report issued by the Corporate Financing Department and will consist of two additional notification forms, the Regulation M Restricted Period Commencement Notification form and the Regulation M Trading Notification form. Moreover, the Report will be able to be requested by the submission of a Request for Underwriting Activity Report form.

In an effort to provide greater efficiency to syndicate managers and other distribution participants, the NASD has engaged CommScan, Inc. (''CommScan''), a New York based company that owns and operates an electronic communications system that currently connects the syndicate departments of approximately 450 subscriber firms, to establish an electronic system for transmission of the Underwriting Activity Report between the regulatory organizations and broker/dealers. The NASD previously analyzed CommScan's system and engaged CommScan to develop a software application known as NASDesk/Compliance Desk, that facilitates electronic communication between lead managers and all syndicate members and the NASD's Corporate Financing Department prior to and during a public offering of securities [3] for the purpose of compliance with the Free-Riding and Withholding Interpretation under IM–2110–1.[4] The NASD is proposing to expand the use of NASDesk/Compliance Desk to provide electronic communications and database capability with respect to compliance with NASD Rules that implement SEC Regulation M and to add a link to Nasdaq Market Operations. NASDesk/Compliance Desk permits the NASD to communicate with members through a preexisting electronic communication system known as SynWire. As a result, the electronic communications transmitted through this system are generally referred to as wires. When the NASD transmits a wire to a member firm, the member is able to download the wire into a pre-formatted database known as SynDesk. Similar to the procedures for the Free-Riding and Withholding Interpretation, NASDesk/Compliance Desk will provide members with pre-formatted wire templates that permit the member firm to fill in data fields with pertinent distribution-related compliance information required by the NASD Rules related to Regulation M. Once the wire templates are completed with the information required by the proposed rule change, the communication protocol designed into NASDesk/Compliance Desk will permit the member firm to access the SynWire transmission system and send the information directly to the Corporate Financing Department and Nasdaq Market Operations.

Thus, the notifications described below that are intended to provide compliance with NASD Rules and SEC Rules 101, 103, and 104 will be able to be electronically transmitted to the NASD and will provide real-time notice and audit trail information to the NASD and to broker/dealers. Initially, at the advent of this program, if a member is not a NASDesk/Compliance Desk subscriber, it may submit the information by fax to CommScan, Inc., which will manually input the information into the notification form and transmit it to the NASD. Moreover, until the NASDesk/Compliance Desk system for Regulation M compliance is implemented, members will provide the required notifications by faxing, directly to Nasdaq Market Operations or Corporation Finance, the notification forms provided by the Association in hard copy.

The Regulation M Restricted Period Commencement Notification form is required to be filed with Nasdaq Market Operations by the managing underwriter with respect to a Nasdaq security in order to request an excused withdrawal on behalf of the distribution participants and affiliated purchasers and whether a distribution participant proposes, instead, to engage in passive market making, in order to comply with the member's requirements under Rule 4619(d)(1). In addition, the Notification is required to be filed with Nasdaq Market Operations by members participating in an offering of an OTCBB security under Rule 6540 in order to provide the intended date and time of the pricing of the offering. (This form is intended to replace the Passive Market Making Activity Report currently used by the Corporate Financing Department.)

The Regulation M Trading Notification form is required to be filed with the Corporate Financing Department under Rule 4623 and Rule 6540 by a member to provide advice on penalty bids and syndicate short covering transactions for Nasdaq and OTCBB securities. In addition, the form is to be used for a request for the entry of a stabilizing bid or an identifier for a penalty bid on Nasdaq security that is directed to Nasdaq Market Operations. In addition, this form will be provided to the managing underwriter of a distribution of securities listed on a national securities exchange when a request for an Underwriting Activity Report is received and is required to be submitted to the Corporate Financing Department with the time and date of the pricing and the pricing amount in order to permit the NASD to carry out its surveillance obligations with respect to such offerings.

In addition, a Request of the Underwriting Activity Report form can be submitted through CommScan by the underwriting manager of an offering not otherwise subject to the filing requirements of the Corporate Financing Rule in order to obtain the Underwriting Activity Report from the Corporate Financing Department. The Regulation M Restricted Period Commencement Notification form or the Regulation M Trading Notification form is required to be attached to the Underwriting Activity Report received by the member when the applicable notification is submitted to Nasdaq Market Operations or the Corporate Financing Department.

The fees to be charged by CommScan for each wire (*i.e.*, each notification or request) sent over their system will be assessed a typical cost of $15 or $20 per wire, and could be less or more depending on the amount of information contained in the wire. The NASDesk/Compliance Desk charges are treated by the managing underwriter as expenses of the underwriting and are charged back to the syndicate.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act [5] in that the proposed rule change will enforce and facilitate compliance by NASD members with the requirements of SEC Regulation M. In addition, the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change to amend the Nasdaq and OTCBB Rules and establish

[3] CommScan's data system provides the NASD with information on all offerings filed with the Commission.

[4] *See* Notice to Members 96–18 (March 1996) for a more complete discussion of the operation of CommScan and SynWire.

[5] 15 U.S.C. § 78*o*–3.

a requirement under the Corporate Financing Rule for members to obtain an Underwriting Activity Report will prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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. 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 the file number in the caption above and should be submitted by April 1, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the NASD proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors. The Commission believes that the NASD's proposal is consistent with Section 15A(b)(6) of that Act in that the amendments to the Nasdaq and OTCBB Rules, in addition to the establishment of a requirement for members to an Underwriting Activity Report, provide a regulatory framework that will assist members in complying with the obligations under Regulation M. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change and Amendment No. 1 (SR–NASD–97–15) be and hereby is approved. The proposed rule change is effective March 4, 1997, with the exception of the provisions Rule 4623 and Rule 5460 that implement the notification requirements adopted under Regulation M with respect to penalty bids and syndicate covering transactions that will become effective on the date that the notification requirements under SEC Rule 104 become effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5979 Filed 3–10–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 U.S.C. § 78s(B)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38354; File No. SR–NASD–97–13)

February 28, 1997.

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the NASD's Excess Spread Rule Applicable to Market Maker Quotations in Nasdaq SmallCap Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(d) to exclude market maker quotations in Nasdaq SmallCap securities from coverage under the Rule. As a result, Rule 4613(d) will apply only to quoted spreads by registered market makers in Nasdaq National Market securities. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

* * * * *

NASD Rule 4613 Character of Quotations

(d) Reasonably Competitive Quotations

A registered market maker in a *Nasdaq National Market* security [listed on The Nasdaq Stock Market] will be withdrawn as a registered market maker and precluded from re-registering as a market maker in such issue for 20 business days if its average 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. *This subparagraph shall not apply to market makers in Nasdaq SmallCap securities.*

(1) If a registered market maker has not satisfied the average spread requirement set forth in this subparagraph (d) for a particular Nasdaq *National Market* security, its registration in such issue shall be withdrawn commencing on the next business day following the business day on which the market maker was sent notice of its failure to comply with the requirement. A market maker may request reconsideration of the withdrawal notification. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members. A request for

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

reconsideration shall not operate as a stay of the withdrawal or toll the twenty business day period noted in subparagraph (d) above.

(2)–(3) No change.

* * * * *

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 NASD 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 III below. The NASD 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

On January 16, 1997, the Securities and Exchange Commission (''SEC'' or ''Commission'') approved modifications to NASD Rule 4613(d) on a temporary basis through July 1, 1997.[3] Specifically, Rule 4613(d), which is commonly known as the NASD's ''excess spread rule,'' presently provides that registered market makers in securities listed on The Nasdaq Stock Market (''Nasdaq'') shall be precluded from being a registered market maker in that issue for 20 business days if its average 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 (''150% Excess Spread Rule'').[4]

As noted in the NASD's filing seeking approval of the 150% Excess Spread Rule on a temporary basis, the Rule is designed to help ameliorate the adverse consequences the 125% Excess Spread Rule may have had on the competitiveness and independence of quotations displayed on the Nasdaq market.[5] At the same time, the NASD and Nasdaq believe the 150% Excess Spread Rule strikes a reasonable balance between the need to eliminate any constraints that the 125% Excess Spread Rule may have placed on firms to adjust their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker, such as affirmative determination exemptions and preferential margin treatment.

Nevertheless, while Nasdaq and the NASD believe the 150% Excess Spread Rule will help to ensure that market makers maintain at least a minimal level of commitment to their issues, Nasdaq and the NASD believe it is prudent to not impose the Rule on a permanent basis until there is a substantial basis to conclude that the 150% Excess Spread Rule has not contributed to or fostered the same unintended consequences created by the former 125% Excess Spread Rule, such as the interdependence of market maker quote movements and the exacerbation of locked and crossed market situations. Accordingly, the SEC approved the NASD's proposal to implement the 150% Excess Spread Rule on a pilot basis through July 1, 1997. During the pilot period, Nasdaq and the NASD will analyze market maker quotation behavior to determine whether the 150% Excess Spread Rule has met its dual objectives of removing constraints on market maker quotation movements and ensuring some minimal level of commitment by market makers to their issues. Throughout the pilot period, Nasdaq and the NASD also will proactively explore whether there are other alternative means to achieve these objectives without reliance on a quotation-based evaluation criteria.[6]

The NASD and Nasdaq are proposing to exclude market maker quotations in Nasdaq SmallCap securities from coverage under NASD Rule 4613(d). This is because, unlike with Nasdaq National Market securities, Nasdaq does not presently calculate and display through the Nasdaq system the average spread of all market makers in Nasdaq SmallCap securities or a comparison of the size of an individual market maker's quoted spread in a Nasdaq SmallCap security relative to the average spread of all market makers in Nasdaq SmallCap securities.[7] Thus, Nasdaq does not presently provide market makers in SmallCap securities with any indication as to whether they are satisfying the requirements of the 150% Excess Spread Rule.

Accordingly, given the pilot nature of the 150% Excess Spread Rule and the length of time necessary to make system modifications to provide market makers in Nasdaq SmallCap securities with the ability to assess whether they are satisfying Rule 4613(d), the NASD and Nasdaq propose to eliminate market maker quotations in Nasdaq SmallCap securities from coverage under the 150% Excess Spread Rule. By excluding market maker quotations in Nasdaq SmallCap securities from the Rule, the NASD and Nasdaq will not be subjecting market makers in these securities to a performance requirement that market makers are incapable of monitoring. This is particularly important since failure to satisfy the requirement of the Rule results in the loss of registered market maker status for a period of 20 business days. In addition, for those Nasdaq National Market securities that have trading attributes similar to Nasdaq SmallCap securities, elimination of the 150% Excess Spread Rule for SmallCap securities will create a ''control group'' that will afford Nasdaq a better opportunity to evaluate the effects of the 150% Excess Spread Rule. The NASD and Nasdaq anticipate, however, that market makers in Nasdaq SmallCap securities will be subject to the same

[3] *See* Securities Exchange Act Release No. 38180 (Jan. 16, 1997), 62 FR 3725 (Jan. 24, 1997) (order approving File No. SR–NASD–96–50).

[4] Previously, Rule 4613(d) provided that registered market makers in Nasdaq securities could not enter quotations that exceeded 125 percent of the average of the three narrowest market maker spreads in that issue (''125 percent test''), provided, however, that the maximum allowable spread shall never be less than ¼ of a point (''125% Excess Spread Rule'').

[5] The SEC found in its 21(a) Report on the NASD and Nasdaq that ''the interdependence of quotes mandated by the rule may deter market makers from narrowing their dealer spreads, because, once the spread is tightened, the rule in some instances precludes a market maker from widening the spread to earlier levels.'' *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (''21(a) Report'') SEC, Aug. 8, 1996, at p. 98. As a result, the SEC found that the excess spread rule creates an economic incentive for market makers to discourage one another from narrowing their quotes, thereby interfering with the ''free flow of prices in the market and imped[ing] attempts by the market to reach the optimal competitive spread.'' *Id.* at p. 99 Accordingly, the SEC requested that the NASD ''modify the rule to eliminate its undesirable effects, or to repeal it. *Id.*

[6] The Commission has stated that ''[a]lthough the amended excess spread rule may reduce some of the anticompetitive concerns outlined in the 21(a) Report, the Commission believes that the amendment . . . may not completely satisfy the NASD's obligations under the Commission's Order with regard to the excess spread rule. Release No. 34–38180, supra note 3. Specifically, it may not remove completely the anticompetitive incentives for market makers to refrain from narrowing quotes because the market makers' quotation obligation continues to be dependent to some extent upon quotations of other market makers in the stock.'' *Id.*

[7] Market makers in Nasdaq National Market securities are able to assess whether they are satisfying the 150% Excess Spread Rule on a daily basis through use of the ''Primary Market Maker (PMM) Window'' of Nasdaq Workstation II. Specifically, while the PMM standards are used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule, Nasdaq's programs that enable market makers to monitor their performance under the ''average spread'' component of the PMM standards also can be used by market makers to evaluate whether they have satisfied the requirements of the 150% Excess Spread Rule.

excess spread requirements, if any, as market makers in the Nasdaq National Market securities beyond July 1, 1997.

2. Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference 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–97–13 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds, for the reasons set forth below, that the NASD's proposal is consistent with the requirements of Section 15A of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Section 15A(b)(6).

The Commission believes that it is reasonable for the NASD to remove application of the 150% Excess Spread Rule to market maker quotations in Nasdaq SmallCap securities because it is difficult for market makers to monitor their compliance with that Rule. This stems from Nasdaq's inability to calculate and display through the system the average spread of all market makers in Nasdaq SmallCap securities or a comparison of the size of an individual market maker's quoted spread in a Nasdaq SmallCap security relative to the average spread of all market makers in Nasdaq SmallCap securities.

The NASD also points out that application of NASD Rule 4613(d) may impose artificial constraints on market makers' quote movements.[8] According to the NASD, market makers may be less apt to adjust their quotes in response to market activity for fear that they will violate the rule and be subject to mandatory withdrawal for 20 business days. The Commission agrees that this is a possibility and prefers to eliminate the potential restraint on market maker quote movements to foster market maker competition, protect the price discovery process and preserve the integrity of quotations in Nasdaq SmallCap securities in furtherance of the objectives of Section 15A(b)(6). While the Commission approves removal of the applicability of the NASD's excess spread rule to market maker quotations in Nasdaq SmallCap securities, however, it expects the NASD to develop other means of stimulating and measuring sound market making performance for all Nasdaq stocks.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register. By accelerating the effectiveness of the proposed rule change, market makers in Nasdaq SmallCap securities will not be subject to mandatory market maker registration withdrawals for 20 business days for noncompliance with the 150% Excess Spread Rule.[9] The Commission reiterates that the NASD should 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.[10]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–97–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5983 Filed 3–10–97; 8:45 am]

BILLING CODE 8010–01–M

[8] See *infra* note 7 and accompanying text.

[9] Because the 150% Excess Spread Rule evaluates a market maker's spread over a full calendar month, February 1997 was the first month in which market maker spreads were evaluated pursuant to NASD Rule 4613(d). Accordingly, March 1997 will be the first month in which market makers will be subject to the mandatory market maker withdrawals for 20 business days for noncompliance with the Rule.

[10] *See* Release 34–38180, *supra* note 3 and 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 (Aug. 8, 1996).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–38364; File No. SR–PSE–97–06]

March 4, 1997.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Changing the Corporate Name From Pacific Stock Exchange Incorporated to Pacific Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 1997, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Article I, Section 1 of the

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

Constitution and the First Section of the Articles of Incorporation to reflect a change in the corporate name from Pacific Stock Exchange Incorporated to Pacific Exchange.

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to effect a change in the corporate name of the Exchange from Pacific Stock Exchange Incorporated to Pacific Exchange. This new corporate name is intended to better reflect the member population at the Exchange and to foster better public recognition of the diversity of the products traded at the PSE.

Over the last several years, the Exchange has experienced tremendous growth, and as a result, the Exchange has been working on the development of a name which would more appropriately reflect who the Exchange is today, while at the same time maintaining the image and good will that the Exchange has already built over the last one hundred or so years. The proposed name, Pacific Exchange, captures the essence of a complete securities exchange, helps to focus on the Exchange's location as not only regional, but with ties to the international horizons.

Basis

Pursuant to Rule 19b–4(e)(3), this proposed rule change is concerned solely with the administration of the Exchange. The proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on February 27, 1997, pursuant to section 19(b)(3)(A) of the Act [3] and subparagraph (e)(3) of Rule 19b–4 [4] thereunder, because the proposed rule change is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 PSE. All submissions should refer to File No. SR–PSE–97–06 and should be submitted by April 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

[3] 15 U.S.C. § 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(e)(3).

[5] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5980 Filed 3–10–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–13]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions or prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 18, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–9–9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 5, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28820.

Petitioner: Northern Air Cargo, Inc.

Sections of the FAR Affected: 14 CFR 119.67(a)(1).

Description of Relief Sought: To permit the petitioner to allow Leonard F. Kirk to continue to serve as Director of Operations for Northern Air Cargo, Inc. without holding an airline transport pilot certificate.

Docket No.: 28823.

Petitioner: Cape Smythe Air Service, Inc.

Sections of the FAR Affected: 14 CFR 119.71(a).

Description of Relief Sought: To permit the petitioner to allow Willis M. Fisher to continue to serve as Director of Operations for Smythe Air Service, Inc. without holding an airline transport pilot certificate.

Docket No.: 28828.

Petitioner: North American Airlines.

Sections of the FAR Affected: 14 CFR 119.67(a)(1).

Description of Relief Sought: To permit the petitioner to allow Edward P. Dascoli to continue to serve as Director of Operations for North American Airlines without holding an airline transport pilot certificate.

[FR Doc. 97–6046 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–14]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemptions (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 31, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 5, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26600.

Petitioner: Keflavik Navy Flying Club.

Sections of the FAR Affected: 14 CFR 91.411(b) and 91.413(c).

Description of Relief Sought: To permit the petitioner to use either the Organizational Maintenance Division of the Air Operations Department of the U.S. Naval Air Station in Keflavik, Iceland, or Icelandair Maintenance to conduct and record the required inspections and tests.

Docket No.: 28752.

Petitioner: Gary L. Moseley.

Sections of the FAR Affected: 14 CFR 91.319.

Description of Relief Sought: To permit the petitioner to operate a Rotorway Exec-90 light piston-engine helicopter, Registration No. N124AF, Serial No. AF–7017775–22, for cattle herding and wildlife counts.

Docket No.: 28768.

Petitioner: Franklin Products.

Sections of the FAR Affected: 14 CFR 25.853(a).

Description of Relief Sought: To allow the petitioner to be exempt from vertical burn test requirements for its seat cushions assembled with non-compliant water-based adhesives currently available.

Docket No.: 28787.

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 61.5 (a) and (c) and 91.203 (a) and (b).

Description of Relief Sought: To allow the petitioner to temporarily operate its aircraft without those aircraft's airworthiness and registration certificates onboard (and properly displayed in the case of airworthiness certificates) while replacements are being obtained.

[FR Doc. 97–6047 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 31, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28741, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–9–9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 5, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28741.

Petitioner: North American Aircraft Services, Inc.

Sections of the FAR Affected: 14 CFR 145.35 and 145.37.

Description of Relief Sought: To permit the petitioner, a certificated repair station, to repair fuel tanks at its customers' facilities that meet the housing and facility requirements of 145.35 and 145.37.

[FR Doc. 97–6049 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 192 meeting to be held March 26–27, 1997, starting at 9:00 a.m. This new special committee is being established to provide recommendations on the design and use of the national airspace. The airspace review is a necessary step in achieving the concept of free flight and transition to a mature air traffic management system. The review includes use of domestic and oceanic airspace and is intended to result in changes that will achieve the most efficient airspace design for customer operations while maintaining the highest standards of safety. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Terms of Reference Review/Approval; (4) Presentations; (5) Other Business; (6) Set Agenda for Next Meeting; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 4, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–5913 Filed 3–10–97; 8:45 am]

BILLING CODE 4810–13–M

Federal Highway Administration

Environmental Impact Statement: Clear Creek and Park Counties, Colorado

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 (EIS) will be prepared for a proposed highway project in Clear Creek and Park Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: W.R. Bird, Environmental Planning Engineer, Federal Highway Administration, P.O. Box 25246, Denver, Colorado 80225–0246, telephone 303–969–5909.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Pike and Arapaho National Forests, and the Colorado Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Colorado Forest Highway 80 (FH 80), known as Guanella Pass Road. Guanella Pass Road is a Scenic Byway that extends from Grant to Georgetown, a distance of 23.5 miles. The proposed improvements include resurfacing the paved portion of the road, paving the sections of the road which are currently gravel, widening (to achieve a consistent two-lane cross section width), and incorporating roadside enhancements in conjunction with the Scenic Byway.

Alternatives under consideration include (1) the ''no build'' alternative; (2) improvement of the existing roadway to appropriate American Association of State Highway and Transportation Officials' design criteria; (3) lesser improvements to the existing facility; and (4) other alternatives, including realignments that may be developed during the scoping process, will also be evaluated.

Notices 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 expressed interest in this proposal. Interagency meetings, public scoping meetings and public hearing will be held in the project area and in other appropriate areas. Information on the time and place of public scoping meetings and public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the hearings.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to 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 on Federal programs and activities apply to this program.)

Issued on: March 4, 1997.

Larry D. Henry,

Project Development Engineer, FHWA, Denver, CO.

[FR Doc. 97–6058 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. PS–153; Notice 2]

Toward a Metric America—a Dialogue Open to the Public; Request for Comments

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

ACTION: Further request for comments.

SUMMARY: On October 23, 1996, RSPA published a notice of public meeting (61 FR 55069) to consider issues relating to

the inclusion of metric equivalents in the pipeline safety regulations (49 CFR Part 190–199). The meeting was held on January 10, 1997, in Dallas, Texas. RSPA specifically requested public comment on seven questions. Among the comments received was a detailed example of how to present metric equivalents in the pipeline safety regulations. RSPA is providing an additional 30 days to receive comments on this comment.

DATES: Comments on this notice must be received by April 10, 1997 to be considered.

ADDRESSES: Send all comments on this notice to Marvin Fell, DOT, RSPA, Office of Pipeline Safety, 400 Seventh Street SW, Room 2335, Washington, DC 20590, or via the Internet at fellm@rspa.dot.gov. A copy of the transcript of the public meeting and the comments received from the public are available for review at the RSPA Docket Office, Room 8119, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, U.S. Department of Transportation, RSPA, Room 2335, 400 Seventh Street, SW, Washington, D.C. 20590, or fellm@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: On October 23, 1996, RSPA published a notice of a public meeting on Metricating Pipeline Safety Regulations that also requested public comment on seven questions. One of the comments received was from Mr. Lawrence J. Stempnik, who prepared a complete set of metric equivalents of measurements in the pipeline safety regulations. Although RSPA is not taking a position on the accuracy or validity of his approach, RSPA does recognize the effort that Mr. Stempnik put forth to provide his comment to RSPA.

In particular, RSPA is interested in additional comments on how precise the metric equivalents should be. Should the number of decimal places be considered, should the number of significant figures be considered, or both? For example, is a conversion from 15 feet to 4.6 meters sufficiently accurate, or is a conversion to 4.57 meters necessary? Comments on this issue were requested in question #6 of the October 23, 1996 notice. Further comments on the other questions in that notice are also encouraged.

Issued in Washington, DC March 5, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–5896 Filed 3–10–97; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 108X)]

Union Pacific Railroad Company—Abandonment Exemption—in Contra Costa County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 1.845-mile portion of its line of railroad known as the Port Chicago Industrial Lead from the end of the line at milepost 37.06 near Clyde, to milepost 38.905 near Port Chicago, in Contra Costa County, CA.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 10, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29[2] must be filed by March 21, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 31, 1997, with: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.[3]

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 19, 1997.[4] Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by March 11, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6031 Filed 3–10–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[3] The Board is scheduled to relocate to the K Street address on March 16, 1997.

[4] SEA would normally issue its EA 5 days after publication of the notice in the Federal Register. However, due to the Board's scheduled relocation on March 16, 1997, the EA in this proceeding will be issued on March 19, 1997.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 4, 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 surveys described below in late March 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 17, 1997. To obtain a copy of this study, please contact the Public Debt Clearance Officer at the address listed below.

Bureau of the Public Debt

OMB Number: 1535–0122.

Project Number: BPD 97–1.

Type of Review: Revision.

Title: Market Research Study on U.S. Savings Bonds.

Description: The Bureau of the Public Debt has entered into an interagency agreement with the Health Resources Study Center of the U.S. Navy (HRSC) to conduct a market research study on U. S. Savings Bonds: a two-stage study a mail survey preceded by focus groups to aid in the design of the survey instrument. This submission is for the final phase, the survey. The need for market research arises primarily from two new Savings Bonds products: the forthcoming sale of U.S. Savings Bonds to the public on a recurring basis through Automated Clearinghouse (ACH) debits from their personal checking accounts; and the issuance of inflation-indexed savings bonds after January 1, 1998, announced by the President September 25, 1996.

Respondents: Individuals.

Estimated Number of Respondents: 27,000.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 9,000 hours.

Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 97–5917 Filed 3–10–97; 8:45 am]

BILLING CODE 4810–40–P

Submission for OMB Review; Comment Request

March 4, 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 late March 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 17, 1997. To obtain a copy of this study, please contact the Alcohol, Tobacco and Firearms Clearance Officer at the address listed below.

Bureau of the Alcohol, Tobacco and Firearms (ATF)

OMB Number: 1512–0527.

Project Number: ATF:CCS–002.

Type of Review: Revision.

Title: National Response Team (NRT) Survey—Administration Procedures.

Description: The NRT survey is being conducted to provide ATF's NRT: (a) Customer satisfaction feedback, to enable it to continuously improve its services. (b) Performance measurement data in compliance with the Government Performance and Results Act (GPRA).

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 22.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 11 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 97–5918 Filed 3–10–97; 8:45 am]

BILLING CODE 4810–31–P

Office of Thrift Supervision

[AC–4; OTS No. 03917]

Peoples Federal Savings and Loan Association of Sidney, Sidney, Ohio; Approval of Conversion Application

Notice is hereby given that on February 26, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Peoples Federal Savings and Loan Association of Sidney, Sidney, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: March 6, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–6042 Filed 3–10–97; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 62, No. 47
Tuesday, March 11, 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 ENERGY

Southeastern Power Administration

Intent To Formulate Revised Power Marketing Policy Cumberland System of Projects

Correction

In document 97–5258, beginning on page 9762, in the issue of Tuesday, March 4, 1997, make the following correction:

On page 9762, in the third column, in the **EFFECTIVE DATE:** entry, ''April 3, 1997'' should read ''May 5, 1997.''

BILLING CODE 1505-01-D

federal register

Tuesday
March 11, 1997

Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3403

Small Business Innovation Research Grants Program; Administrative Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3403

Small Business Innovation Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to amend its regulations relating to the administration of the Small Business Innovation Research (SBIR) Grants Program, which prescribe the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program. This rule amends those regulations by identifying information that will be specified in the annual solicitation as opposed to this rule. CSREES is republishing these regulations in their entirety with the proposed amendments in order to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before April 10, 1997.

ADDRESSES: Written comments should be sent to Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2240, 1400 Independence Avenue, SW., Washington, DC 20250–2240.

FOR FURTHER INFORMATION CONTACT: Sally J. Rockey at (202) 401–1766.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been approved under OMB Document Nos. 0524–0022, 0524–0025, and 0524–0026.

Classification

This proposed rule has been reviewed under Executive Order 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, the Department certifies that the proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534 (5 U.S.C. 601 et seq.).

Regulatory Analysis

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.212, Small Business Innovation Research (SBIR Program). For the reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, and pursuant to the Notice found at 52 FR 22831, June 16, 1987, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

On June 10, 1988, the Department published a Final Rule in the Federal Register (53 FR 21966–21972), which established part 3403 of title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) Grants Program conducted under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. 99–591, 100 Stat. 3341. This rule established and codified the procedures to be followed in the solicitation of competitive small business innovation research proposals, the evaluation of such proposals, and the award of grants under this program. On September 20, 1991, the Department published a Final Rule in the Federal Register (56 FR 47882–47889), which amended the Cooperative State Research Service (CSRS) regulations relating to the Small Business Innovation Research Grants Program. On December 30, 1994, the Department published a Final Rule in the Federal Register (59 FR 68072) which amended 7 CFR chapter XXXIV to reflect the abolishment of CSRS and the establishment of CSREES. On May 15, 1996, the Department published a Final Rule in the Federal Register (61 FR 25366) amending 7 CFR Chapter XXXIV by encouraging the individuals who are principally responsible for the scientific or technical direction of the proposed work to be designated as the principal investigator, making it a condition that Federal funds remain for an extension of a Phase I grant and that an extension will not normally exceed 12 months, requiring that when purchasing equipment or products with agreement funds that only American-made items are purchased to the extent possible, and making a few additional changes. These regulations are proposed to be amended as follows:

Authority: CSREES proposes to amend the authority citation from ''5 U.S.C. 638'' to ''15 U.S.C. 638'' to correct a technical error.

Section 3403.2. CSREES proposes to correct ''in behalf of'' to read ''on behalf of'' in the definition of ''awarding official.'' In addition, CSREES proposes to revise the definition of ''funding agreement'' to include ''concern'' after ''small business'' and the definition of ''Socially and economically disadvantaged individual'' by removing the ''or'' before ''Subcontinent Asian Americans'' to be in accordance with the language of the January 1993 SBIR Policy Directive.

Section 3403.3. CSREES proposes to change references of a ''firm'' to ''organization'' in order to be consistent throughout the document. In addition, CSREES proposes to include ''concern'' after ''small business'' to be in

accordance with the language of the January 1993 SBIR Policy Directive.

Section 3403.6(d). CSREES proposes to delete the language in this section and replace it with a statement that the information will be identified in the annual solicitation.

Section 3403.7. CSREES proposes to add paragraph (a) and redesignate paragraphs (a) through (m) as paragraphs (1) through (13), paragraphs (c) (1) through (6) as subparagraphs (3) (i) through (vi), paragraphs (g) (1) and (2) as subparagraphs (7) (i) and (ii), paragraphs (h) (1) through (6) as subparagraphs (8) (i) through (vi), paragraphs (k) (1) through (3) as subparagraphs (11) (i) through (iii), and paragraphs (l) (1) and (2) as subparagraphs (12) (i) and (ii). Furthermore, CSREES proposes to add language to identify that further instructions or descriptions of the phase I proposal items as well as additional items will be provided in the annual solicitation, as necessary. As such, much of the instructions and descriptions of the phase I items are deleted from this section.

Section 3403.7(g). CSREES proposes to add an item (iii) to require the applicant to identify whether and by what means the proposed research will satisfy the public interest. This will assist in determining the potential success of potential commercial application.

Section 3403.7(j). CSREES proposes to add language to explain that if an Institutional Review Board (IRB) review is required that USDA must receive and accept the IRB approval before grant funds will be released to the grantee.

Section 3403.8. CSREES proposes to add paragraph (a) and redesignate paragraphs (a) through (h) as paragraphs (1) through (8) and paragraphs (h) (1) and (2) as subparagraphs (8) (i) and (ii). In addition, see proposed change described for § 3403.7. The same changes are proposed for phase II proposals as are proposed for phase I proposals.

Section 3403.10(b). CSREES proposes to add language to explain that the evaluation criteria will be identified in the annual solicitation.

Section 3403.11. CSREES proposes to delete this section due to the proposed change identified for § 3403.10(b).

Section 3403.12. CSREES proposes to delete paragraph (a) and add paragraph (b) to § 3403.10(e) due to the proposed change identified for § 3403.10(b).

Section 3403.13. CSREES proposes to redesignate § 3403.13 as § 3403.11.

Section 3403.14. CSREES proposes to redesignate § 3403.14 as § 3403.12.

Section 3403.15. CSREES proposes to redesignate § 3403.15 as § 3403.13.

Section 3403.16. CSREES proposes to redesignate § 3403.16 as § 3403.14. In addition, CSREES proposes to change references of ''Department'' to ''Authorized Departmental Officer'' to be more specific.

Section 3403.16(c). CSREES proposes to change the reference to a specific phase I dollar amount with ''the approved award amount'' since the phase I award amount may vary from one year to the next.

Section 3403.17. CSREES proposes to redesignate § 3403.17 as § 3403.15. In addition, CSREES proposes to add ''9 CFR Parts 1, 2 , 3, and 4—USDA Laboratory Animal Care Regulations'' after the reference to 7 CFR part 3407 and before the reference to 48 CFR part 31.

Section 3403.18. CSREES proposes to redesignate § 3403.18 as § 3403.16.

CSREES proposes to republish title 7, subtitle B, chapter XXXIV, part 3403, in its entirety with the proposed aforementioned changes. This action will preclude making a separate amendment to these regulations and allow the regulations to appear in one document for easy access and reference by the public and CSREES.

List of Subjects in 7 CFR Part 3403

Grant programs—Agriculture, Grant administration. For the reasons set out in the preamble, title 7, subtitle B, chapter XXXIV, part 3403 of the Code of Federal Regulations is revised to read as follows:

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

Subpart A—General Information

Sec.
3403.1 Applicability of regulations.
3403.2 Definitions.
3403.3 Eligibility requirements.

Subpart B—Program Description

3403.4 Three-phase program.

Subpart C—Preparation and Submission of Proposals

3403.5 Requests for proposals.
3403.6 General content of proposals.
3403.7 Proposal format for phase I applications.
3403.8 Proposal format for phase II applications.
3403.9 Submission of proposals.

Subpart D—Proposal Review and Evaluation

3403.10 Proposal review.
3403.11 Availability of information.

Subpart E—Supplementary Information

3403.12 Terms and conditions of grant awards.
3403.13 Notice of grant awards.
3403.14 Use of funds; changes.
3403.15 Other Federal statutes and regulations that apply.
3403.16 Other Conditions.

Authority: 15 U.S.C. 638.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. 99–591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage the participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in technological innovation. The U.S. Department of Agriculture (USDA) will participate in this program through the issuance of competitive research grants which will be administered by the Office of Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service (CSREES).

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3403.2 Definitions.

As used in this part:

Ad hoc reviewers means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific or technical merit of

grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

Awarding official means any officer or employee of the Department who has the authority to issue or modify research project grant instruments on behalf of the Department.

Budget period means the interval of time into which the project period is divided for budgetary and reporting purposes.

Commercialization means the process of developing markets and producing and delivering products or services for sale (whether by the originating party or by others); as used here, commercialization includes both government and commercial markets.

Department means the Department of Agriculture.

Funding agreement is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business concern for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

Grantee means the small business concern designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

Peer review group means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

Principal investigator means a single individual designated by the grantee in the grant application and approved by the Department who is responsible for the scientific or technical direction of the project. Therefore, the individual should have a scientific and technical background.

Program solicitation is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in selected areas and invites proposals from small business concerns in response to those needs.

Project means the particular activity within the scope of one of the research topic areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

Project period means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

Research or research and development (R&D) means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research project grant means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

Small business concern means a concern which at the time of award of phase I and phase II funding agreements meets the following criteria:

(1) Is organized for profit, independently owned or operated, is not dominant in the field in which it is proposing, has its principal place of business located in the United States, has a number of employees not exceeding 500 (full-time, part-time, temporary, or other) in all affiliated concerns owned or controlled by a single parent concern, and meets the other regulatory requirements outlined in 13 CFR part 121. Business concerns, other than licensed investment companies, or State development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, et seq., are affiliates of one another when directly or indirectly one concern controls or has the power to control the other or third parties (or party) control or have the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term ''affiliates'' is defined in greater detail in 13 CFR 121.401(a) through (m). The term ''number of employees'' is defined in 13 CFR 121.407. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

(2) Is at least 51 percent owned, or in the case of a publicly owned business at least 51 percent of its voting stock is owned, by United States citizens or lawfully admitted permanent resident aliens.

Socially and economically disadvantaged small business concern is one that is:

(1) At least 51 percent owned by:

(i) An Indian tribe or a native Hawaiian organization, or

(ii) One or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals.

Socially and economically disadvantaged individual is a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, other groups designated from time to time by the Small Business Administration (SBA) to be socially disadvantaged, or any other individual found to be socially and economically disadvantaged by the SBA pursuant to section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

Subcontract is any agreement, other than one involving an employer-employee relationship, entered into by a Federal Government funding agreement awardee requesting supplies or services required solely for the performance of the funding agreement.

United States means the fifty States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

Women-owned small business concern means a small business concern that is at least 51 percent owned by a woman or women who also control and operate it. Control as used in this context means exercising the power to make policy decisions. Operate as used in this context means being actively involved in the day-to-day management of the concern.

§ 3403.3 Eligibility requirements.

(a) *Eligibility of organization.* (1) Each organization submitting a proposal must qualify as a small business concern for research purposes, as defined in § 3403.2. Joint ventures and limited partnerships are eligible to apply for and to receive research grants under this program, provided that the entity created qualifies as a small business

concern in accordance with section 2(3) of the Small Business Act (15 U.S.C. 632) and as defined in § 3403.2 of this part. For both phase I and phase II the research must be performed in the United States.

(2) A minimum of two-thirds of the research or analytical work, as determined by budget expenditures, must be performed by the proposing organization under phase I grants. For phase II awards, a minimum of one-half of the research or analytical effort must be conducted by the proposing organization. The space used by the SBIR awardee to conduct the research must be space over which it has exclusive control for the period of the grant.

(b) *Eligibility of principal investigator.* (1) It is strongly suggested that the individual responsible for the scientific or technical direction of the project be designated as the principal investigator. In addition, the primary employment of the principal investigator must be with the proposing small business concern at the time of award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the small business concern. Primary employment with the small business applicant precludes full-time employment with another organization.

(2) If the proposed principal investigator is employed by another organization (e.g., university or another company) at the time of submission of the application, documentation must be submitted with the proposal from the principal investigator's current employer verifying that, in the event of an SBIR award, he/she will become a less-than half-time employee of such organization and will remain so for the duration of the SBIR project.

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research Grants Program will be carried out in three separate phases described in this section. The first two phases are designed to assist USDA in meeting its research and development objectives and will be supported with SBIR funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in phases I and II through the use of private or Federal non-SBIR funds.

(a) Phase I is the initial stage in which the scientific and technical merit and feasibility of an idea related to one of the research areas described in the program solicitation is evaluated, normally for a period not to exceed 6 months. In special cases, however, where a proposed research project requires more than 6 months to complete, a longer grant period may be considered. A proposer of a phase I project with an anticipated duration beyond 6 months should specify the length and duration in the proposal at the time of its submission to USDA in order for it to be considered at the time of award. (See § 3403.14(c) for changes in project period subsequent to award).

(b) Phase II is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only those small businesses previously receiving phase I awards are eligible to submit phase II proposals. For each phase I project funded the awardee may apply for a phase II award only once. Phase I awardees who for valid reasons cannot apply for phase II support in the next fiscal year funding cycle may apply for support not later than the second fiscal year funding cycle.

(c) Phase III is to stimulate technological innovation and the national return on investment from research through the pursuit of commercial objectives resulting from the work supported by SBIR funding carried out in phases I and II. This portion of the project is performed by the small business concern and privately funded or Federally funded by a non-SBIR source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business concern and a provider of follow-on capital for a specified amount of funds to be made available to the small business concern for further development of their effort upon achieving certain mutually agreed upon technical objectives during phase II.

Subpart C—Preparation and Submission of Proposals

§ 3403.5 Requests for proposals.

(a) *Phase I.* A program solicitation requesting phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. The solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved, forms to be completed and submitted with proposals, and special requirements. A notice will be published in the Federal Register informing the public of the availability of the program solicitation.

(b) *Phase II.* For each fiscal year in which funds are made available for this purpose, the Department will send a letter requesting phase II proposals from the phase I grantees eligible to apply for phase II funding in that fiscal year. The letter will be accompanied by the solicitation which contains information sufficient to enable eligible applicants to prepare grant proposals and includes forms to be submitted with proposals as well as special requirements.

§ 3403.6 General content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific/technological research activities. A small business concern must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Many of the research projects supported by the SBIR program lead to the development of new products based upon the research results obtained during the project. However, projects that seek funding solely for product development where no research is involved, i.e. the funds are needed to permit the development of a project based on previously completed research, will not be accepted. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR phase I or phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. Duplicate proposals will be returned to the applicant without review.

(d) The limitation on the length of phase I and phase II proposals, text instructions, and the formatting instructions will be identified in the annual solicitation.

§ 3403.7 Proposal format for phase I applications.

(a) The following items relate to phase I applications. Further instructions or descriptions for these items as well as any additional items to be included will be provided in the annual solicitation, as necessary.

(1) *Proposal cover sheet.* Photocopy and complete Form CSREES–667 in the program solicitation. The original of the proposal cover sheet must at a minimum contain the pen-and-ink signatures of the proposed principal investigator(s) and the authorized organizational official.

(2) *Project summary.* Photocopy and complete Form CSREES–668 in the program solicitation. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords, to be provided in the last block on the page, should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and, therefore, should not contain proprietary information.

(3) *Technical content.* The main body of the proposal should include:

(i) Identification and significance of the problem or opportunity.

(ii) Background and rationale.

(iii) Relationship with future research or research and development.

(iv) Phase I technical objectives.

(v) Phase I work plan.

(vi) Related research or research and development.

(4) *Key personnel and bibliography.* Identify key personnel involved in the effort, including information on their directly related education and experience.

(5) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(6) *Consultants.* Involvement of university or other consultants in the planning and research stages of the project is permitted and may be particularly helpful to small firms which have not previously received Federal research awards. If such involvement is intended, it should be described in detail.

(7) *Potential post application.* Briefly describe:

(i) Whether and by what means the proposed research appears to have potential commercial application;

(ii) Whether and by what means the proposed research appears to have potential use by the Federal Government; and

(iii) Whether and by what means the proposed research will satisfy the public interest.

(8) *Current and pending support.* If a proposal, substantially the same as the one being submitted, has been previously funded or is currently funded, pending, or about to be submitted to another Federal agency or to USDA in a separate action, the proposer must provide the following information:

(i) Name and address of the agency(s) to which a proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(ii) Date of actual or anticipated proposal submission or date of award, as appropriate.

(iii) Title of proposal or award, identifying number assigned by the agency involved, and the date of program solicitation under which the proposal was submitted or the award was received.

(iv) Applicable research topic area for each proposal submitted or award received.

(v) Title of research project.

(vi) Name and title of principal investigator for each proposal submitted or award received. USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.

(9) *Cost breakdown on proposal budget.* Photocopy and complete the budget form in the program solicitation only for the phase under which you are currently applying. (An applicant for phase I funding should not submit both phase I and II budgets.)

(10) *Research involving special considerations.* If the proposed research will involve recombinant DNA molecules, human subjects at risk, or laboratory animal care, the proposal must so indicate and include an assurance statement (Form CSREES–662) as the last page of the proposal. The original of the assurance statement must at a minimum contain the pen-and-ink signature of the authorized organizational official. In order to complete the assurance statement, the proposer may be required to have the research plan reviewed and approved by an appropriate ''Institutional Review Board'' (IRB) prior to commencing actual substantive work. If an IRB review is required, USDA will not release funds for an award until proper documentation of the IRB approval is submitted to and accepted by USDA. It is suggested that proposers contact local universities, colleges, or nonprofit research organizations which have established such reviewing mechanisms to have this service performed.

(11) *Proprietary information.* (i) If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term ''confidential proprietary information'' and provided the following legend appears in the designated area at the bottom of the proposal cover sheet (Form CSREES–667): *The following pages (specify) contain proprietary information which (name of proposing organization) requests not be released to persons outside the Government, except for purposes of evaluation.*

(ii) USDA by law is required to make the final decision as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the proposer. However, USDA will retain for one year one file copy of all proposals received; extra copies will be destroyed. Public release of information for any proposal submitted will be subject to existing statutory and regulatory requirements. Any proposal which is funded will be considered an integral part of the award and normally will be made available to the public upon request except for designated proprietary information that is determined by USDA to be proprietary information.

(iii) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA. Any other legend than that listed in paragraph (a)(11)(i) of this section may be unacceptable to USDA and may constitute grounds for return of the

proposal without further consideration. Without assuming any liability for inadvertent disclosure, USDA will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

(12) *Rights in data developed under SBIR funding agreement.* The SBIR legislation provides for ''retention of rights in data generated in the performance of the contract by the small business concern.''

(i) The legislative history clarifies that the intent of the statute is to provide authority for the participating agency to protect technical data generated under the funding agreement, and to refrain from disclosing such data to competitors of the small business concern or from using the information to produce future technical procurement specifications that could harm the small business concern that discovered and developed the innovation until the small business concern has a reasonable chance to seek patent protection, if appropriate.

(ii) Therefore, except for program evaluation, participating agencies shall protect such technical data for a period of not less than 4 years from the completion of the project from which the data were generated unless the agencies obtain permission to disclose such data from the contractor or grantee. The government shall retain a royalty-free license for government use of any technical data delivered under an SBIR funding agreement whether patented or not.

(13) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management, personnel and financial information to assure the responsibility of the proposer. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only. However, new information should be submitted if a small business concern has undergone significant changes in organization, personnel, finance, or policies including those relating to civil rights.

§ 3403.8 Proposal format for phase II applications.

(a) The following items relate to phase II applications. Further instructions or descriptions for these items as well as any additional items to be included will be identified in the annual solicitation, as necessary.

(1) *Proposal cover sheet.* Follow instructions found in § 3403.7(a)(1) of this part.

(2) *Project summary.* Follow instructions found in § 3403.7(a)(2) of this part.

(3) *Phase I results.* The proposal should contain an extensive section that lists the phase I objectives and makes detailed presentation of the phase I results. This section should establish the degree to which phase I objectives were met and feasibility of the proposed research project was established.

(4) *Proposal.* Since phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(a)(3) of this part should be followed, tailoring the information requested to the phase II project.

(5) *Cost breakdown on proposal budget.* For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period.

(6) *Organizational management information.* Each phase II awardee will be asked to submit an updated statement of financial condition (such as the latest audit report, financial statements or balance sheet).

(7) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on funding, it should be forwarded with the phase II application.

(8) *Documentation of multiple phase II awards.* (i) An applicant that submits a proposal for a funding agreement for phase I and has received more than 15 phase II awards during the preceding 5 fiscal years, must document the extent to which it was able to secure phase III funding to develop concepts resulting from previous phase II awards. This documentation should include the name of the awarding agency, date of award, funding agreement number, topic or subtopic title, amount and date of phase II funding and commercialization status for each phase II award.

(ii) USDA shall collect and retain the information submitted under paragraph (a)(8)(i) of this section at least until the General Accounting Office submits the report required under section 106 of the Small Business Research and Development Enhancement Act of 1992.

§ 3403.9 Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria identified in the annual solicitation, as appropriate. Proposals found to be nonresponsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, any critical USDA requirements, and budget limitation. In addition, the follow-on funding commitment will be a consideration for phase II proposals. In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development in phase III will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement

with reasonable terms for an amount at least equal to the funding requested from USDA in phase II.

§ 3403.11 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR Policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

Subpart E—Supplementary Information

§ 3403.12 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in the annual solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the Federal Acquisition Regulation (48 CFR part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

§ 3403.13 Notice of grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of the Principal Investigator(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Federal financial assistance approved for the project period.

(7) Legal authorities under which the grant is awarded.

(8) Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described in paragraph (a) of this section.

§ 3403.14 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the ADO to complete or fulfill the purposes of an approved project provided Federal funds remain. The extension shall be conditioned upon a prior request by the grantee and approval in writing by the ADO. In such cases the extension will not normally exceed 12 months, the phase I award will still be limited to the approved award amount, and the submission of a Phase II proposal will be delayed by one year. The extension allows the grantee to continue expending the remaining Federal funds for the intended purpose over the extension period. In instances where no Federal funds remain, it is unnecessary to approve an extension since the purpose of the extension is to continue using Federal funds. The grantee may opt to continue the Phase I project after the grant's termination and closeout, however, the grantee would have to do so without additional Federal funds. In the latter case, no communication with USDA is necessary. However, the maximum delay for submission of a Phase II proposal remains as specified in § 3403.4(b).

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded;

(3) Result in a need or claim for the award of additional funds; or

(4) Involve transfers or expenditures of amounts requiring prior approval as set forth in the Departmental regulations or in the grant award.

§ 3403.15 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR part 1.1—USDA implementation of Freedom of Information Act.

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR part 3—USDA implementation of OMB Circular A–129, Managing Federal Credit Programs.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives where applicable (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended.

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act.

9 CFR parts 1, 2, 3, and 4—USDA implementation of the Act of August 24, 1966, Pub. L. 89–544, as amended (commonly known as the Laboratory Animal Welfare Act).

48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3403.16 Other conditions.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, DC, this 4th day of March 1997.

B. H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–5914 Filed 3–10–97; 8:45 am]

BILLING CODE 3410–22–P

federal register

Tuesday
March 11, 1997

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of application.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program Solicitation of Proposals for Fiscal Years (FY) 1997 and 1998 and 1997 Supplemental Grants for Special International Study or Thesis/Dissertation Research Travel Allowances. Applications are invited for competitive grant awards to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences for FYs 1997 and 1998. Additionally, CSREES seeks applications from recipients of presently active national needs fellowship grants for supplemental grants to support special international study or thesis/dissertation research experiences for current Fellows.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gilmore, USDA/Higher Education Programs, 202–720–1973, jgilmore@reeusda.gov

SUPPLEMENTARY INFORMATION:

I. Food and Agricultural Sciences National Needs Graduate Fellowship Grants

Authority

The authority for this program is contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)). Under this program, subject to the availability of funds, the Secretary may make competitive grants, for periods not to exceed five years, to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct graduate fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences.

Targeted Areas

Food and agricultural sciences areas appropriate for fellowship applications are those in which shortages of expertise have been determined and targeted by CSREES for national needs graduate fellowship support. Beginning with FY 1997, CSREES will support six national needs areas on a biennial basis and combine appropriations from two fiscal years into one competition to be held during odd-numbered years. The targeted national needs areas to be supported for the combined FY 1997/98 competition are: Biotechnology—Animal; Biotechnology—Plant; Engineering—Food, Forest Product, or Agricultural; Human Nutrition and/or Food Science; Marketing or Management—Food, Forest Products, or Agribusiness; and Water Science. In FY 1997/98, only the doctoral level of study will be supported.

Proposal Limitations

For the FY 1997/98 program, a proposal may request funding in only one national needs area. A proposal may request a minimum of two fellowships and a maximum of four fellowships in the national needs area for which funding is requested. No limitation is placed on the number of proposals an institution may submit. However, the same college or equivalent administrative unit within an institution may only submit a maximum of six proposals, and no more that one proposal may be submitted in any one national needs area by the same college or equivalent administrative unit within an institution. While proposals must document institution willingness to recruit and train at least two, but not more than four, fellows in a national needs area, CSREES may fund fewer fellows than requested in a proposal.

Available Funding

CSREES anticipates that approximately $5,800,000 will be available for fellowship grants for the FY 1997/98 combined competition, including $2.9 million from FY 1997 appropriations and $2.9 million in anticipated FY 1998 appropriations. Contingent on the availability of these funds, approximately $970,000 will be allocated to each of the six national needs areas. This program is highly competitive, and it is anticipated that available funding will support approximately 108 doctoral fellows through approximately nine grants in each of the six targeted areas. No-year funds drawn from expired fellowship grants with unspent funds remaining may be used to fund additional fellows. Please note that Congress has not yet enacted a Fiscal Year 1998 appropriations bill for the Department. Therefore, the $5.8 million cited for FY 1997/98 grants is only tentative and USDA is not bound by this estimate. If Congress appropriates other than the anticipated amount, these combined appropriated FYs 1997 and 1998 funds will be allocated equally among all six national needs areas.

Each institution funded will receive $54,000 for each doctoral fellowship awarded. However, it is anticipated that total program funds available will not be evenly divisible by $54,000. Therefore, one fellowship may be supported on a partial basis with a lesser amount of funds, or one fellowship may be supported fully by a combination of FY 1997/98 funds and unspent funds remaining from expired fellowship grants. Except in the case of a partially funded fellowship, fellowship monies must be used to: (1) support the same doctoral fellow for three years at $17,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the duration of the grant. Total funds awarded to an institution under the program in FY 1997/98 shall not exceed $648,000.

Application Information

An application package is available that provides the forms, instructions, and other relevant information needed by institutions to apply to the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program described herein. Copies of the application package may be requested from the Proposal Services Unit; Grants Management Branch; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; Washington, D.C. 20250–2245. The telephone number is 202–401–5048. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997/98 Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

The proposal narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. The proposal should be

paginated and a Table of Contents should be included preceding the proposal narrative. Applicants are cautioned to comply with the 20-page limitation for the narrative section of the proposal. Applicants also are cautioned to include *summary* faculty vitae through the use of Form CSREES–708.

When and Where to Submit Proposals

An original plus six copies of a proposal and one copy of the institution's latest graduate catalog must be submitted. All proposals must be received by 3:30 p.m. eastern time May 15, 1997. Proposals submitted through the U.S. mail should be sent to the following address: Proposal Services Unit; Grants Management Branch; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; Washington, DC 20250–2245. Hand-delivered proposals, including those submitted through an express mail or a courier service, should be sent to the following address: Proposal Services Unit; Grants Management Branch; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. Proposals transmitted via a facsimile (FAX) machine will not be accepted.

Submission of an Intent to Submit a Proposal form (Form CSREES–706) is neither required nor requested for the FY 1997/98 competition.

II. 1997 Special International Study or Thesis/Dissertation Research Travel Allowances

Authority

Under the authority contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), and in accordance with the Administrative Provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program (7 CFR part 3402.5(e)), CSREES will award supplement grants, on a competitive basis, for special international study or thesis/dissertation research travel allowances. Institutions eligible to receive supplemental grants are those that have active National Needs Graduate Fellowship Grants (awarded in FY 1996 or earlier). Please note that CSREES will solicit proposals for special international study or thesis/dissertation research travel allowances again in 1998.

Eligibility

Eligibility for this opportunity is limited to any current Fellow with sufficient time to complete the international experience before the termination date of the fellowship grant under which he/she is supported. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s). All national needs areas previously supported under the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program are eligible for the supplementary grants for special international study or thesis/dissertation research travel allowances.

Available Funding

CSREES has determined that no FY 1997 appropriations will be targeted to supplemental grants supporting special international study or thesis/dissertation research travel allowances; rather, no-year funds drawn from expired fellowship grants with unspent funds remaining will be used to support such supplemental grants. Estimated funds for supplemental grants in FY 1997 are approximately $60,000.

For each travel allowance, the institution may request up to $3,000. Travel allowance monies may be used only to pay travel and living expenses for the Fellow while the Fellow is on the specific international assignment as proposed in the application for the special international study or thesis/dissertation research travel allowances. No limitation is placed on the number of applications an institution may submit. Awards will be made to the extent possible based on availability of funds. To the extent possible, all applications associated with one CSREES grant number should be submitted at the same time in order to facilitate the award of these supplemental grants and minimize accounting activity at the grantee institution.

Application Information

A separate application must be submitted by a fellowship grant project director at an eligible institution on behalf of each Fellow for which a special international study or thesis/dissertation research travel allowance is requested. Applications for the special international study or thesis/dissertation research travel allowance supplemental awards may be submitted at any time prior to 3:30 p.m. eastern time on October 15, 1997. However, to allow time for CSREES to process the applications, proposals should be submitted at least three months prior to the proposed beginning date of the international travel experience. Applicants are urged to submit their proposals early.

(*Note:* Proposals for these special supplemental awards should *not* be submitted as part of the application for a FY 1997/98 Graduate Fellowship grant.)

Each application must include an ''Application for Funding,'' Form CSREES–661, and a ''Budget,'' Form CSREES–55. To provide the office of Higher Education Programs (HEP) with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following: (1) the specific destination(s) and duration of the travel; (2) the specific study or thesis/dissertation research activities in which the Fellow will be engaged; (3) how the international experience will contribute to the Fellow's program of study; (4) a budget narrative specifying and justifying the dollar amount requested for the travel; (5) summary credentials of both the U.S. and international faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person; ''Summary Vita—Teaching Proposal,'' Form CSREES–708, may be used for this purpose); (6) a letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and (7) a letter from the fellowship grant project director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

The narrative portion of the application must not exceed 10 pages, excluding the summary vita/vitae. The narrative should be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch.

An application package containing the forms, instructions, and other relevant information needed by institutions to apply for the special

international study or thesis/dissertation research travel allowances may be requested from the Proposal Services Unit; Grants Management Branch; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; Washington, D.C. 20250–2245. The telephone number is 202–401–5048. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997/98 Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Evaluation of Applications

Applications for the special international travel allowances will be evaluated as they are received until available funds for the supplemental grants are exhausted. Upon receipt of an application, CSREES staff will first determine the eligibility of the Fellow for whom the application was submitted for an international travel experience. Eligible and complete requests then will be reviewed, using the criteria and weights indicated below, by professional staff from USDA or other Federal agencies, as appropriate. Proposals judged to be worthy of funding will be eligible for supplemental awards. Since awards for supplemental grants will be made as reviews are completed, there is no assurance funds will be available late in the application period for every acceptable proposal.

The evaluation criteria for special international study or thesis/dissertation research travel allowance applications are indicated below. The points are provided as a guide to the relative importance of each criterion, but all criteria must be addressed satisfactorily.

a. Destination and duration—the degree to which the destination and duration of the travel experience is appropriate for enhancing the Fellow's academic program—10 points.

b. Travel experience activities—the degree to which the specific international experiences contribute to the Fellow's program of study—30 points.

c. Advance preparations—the degree to which the proposed study or research activities are well-planned, including the likelihood that these activities will come to fruition and that the participation of identified personnel will materialize—20 points.

d. Budget—the degree to which the budget for the international experience is justified—10 points.

e. Personnel—the degree to which the personnel, both U.S. and international, involved with the travel experience have the appropriate credentials and experience to direct the Fellow's international experience, and the likelihood that their participation as mentors, trainers, advisors, or teachers will contribute to the educational value of the travel experiences—20 points.

f. Supporting documentation—the degree to which letters from the dean of the college (or equivalent administrative unit) and the fellowship grant project director support the application—10 points.

When and where to Submit Applications

An original plus six copies of each application must be submitted. Each copy of the application should be stapled securely in the upper left-hand corner. Please do not bind the original or the copies of the application. All copies of the application must be mailed in one package. Applications transmitted via a facsimile (FAX) machine will not be accepted. Applications submitted through the U.S. mail should be sent to the following address: Proposal Services Unit; Grants Management Branch; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; Washington, D.C. 20250–2245. hand-delivered proposals, including those submitted through an express mail or a courier service, should be brought to the following address: Proposal Services Unit; Grants Management Branch; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is 202–401–5048. Applications may be submitted at any time prior to 3:30 p.m. eastern time on October 15, 1997.

III. Applicable Regulations

This program is subject to the administrative provisions found at CFR part 3402 (59 FR 68072, December 30, 1994) which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants.

In addition, the USDA Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, 7 CFR part 3019 (60 FR 44122 (August 24, 1995)), to this program. Other Federal statutes and regulations that apply to this program are identified in the administrative provisions.

IV. Supplementary Information

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210. For the reasons set forth in the Final Rule-related notice to 7 CFF part 3015, subpart V, 48 FR 29115, June 24,1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements for this program have been approved under OMB Document No. 0524–0022 and 0524–0024.

V. Program Contact

If you have questions concerning the submission of Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program proposals, please contact Dr. Jeffrey Gilmore, Higher Education Programs, Science and Education Resources Development, CSREES, USDA, at 202–720–1973 (voice), 202–720–2030 (fax), or jgilmore@reeisda.gov (Internet),

Done at Washington, D.C., this 4th day of March, 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–5915 Filed 3–10–97; 8:45 am]

BILLING CODE 3416–22–M

federal register

Tuesday
March 11, 1997

Part IV

Environmental Protection Agency

40 CFR Parts 123 and 501

Streamlining the State Sewage Sludge Management Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 501

[FRL–5702–1]

RIN 2040–AC87

Streamlining the State Sewage Sludge Management Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend its regulations that establish the requirements for States seeking approval to operate sewage sludge permit programs pursuant to section 405(f)(1) of the Clean Water Act. These requirements are now found at 40 CFR parts 123 (for National Pollutant Discharge Elimination System (NPDES) programs) and 501 (for non-NPDES programs). Both sets of requirements were modeled on the NPDES requirements for authorization of wastewater effluent discharge programs. Many States manage sewage sludge through their solid waste programs which are often structured differently from the NPDES programs. As a result, existing State sewage sludge programs may require significant changes in order to meet all the requirements of parts 123 or 501. EPA is eager for States with well-run sewage sludge management programs to obtain approval to operate their own permit programs under section 405(f)(1) without having to make unnecessary administrative and programmatic changes unrelated to protection of public health and the environment. The proposed changes would streamline the regulations to ease the authorization process for States, provide flexibility to States in implementing their permit programs and ensure that permitting determinations are based on environmental and public health considerations.

DATES: In order to be considered, comments must be received on or before May 12, 1997.

ADDRESSES: Comments should be addressed to State Sewage Sludge Management Rule Comment Clerk, Water Docket MC–4101; U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Commenters are requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by May 12, 1997. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time), May 12, 1997. EPA is experimenting with electronic commenting; therefore commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

The public may inspect the administrative record for this rulemaking at EPA's Water Docket, 401 M Street, SW., Washington, DC 20460, Room L–102 between the hours of 9 a.m. and 3:30 p.m. on business days. For access to docket materials, please call (202) 260–3027 for an appointment during the aforementioned hours. A reasonable fee will be charged for copying.

FOR FURTHER INFORMATION CONTACT: Wendy Bell, (202) 260–9534, Permits Division (4203), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Regulated entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the State Sewage Sludge Management Program. Regulated entities include:

Category	Examples of regulated entities
State government	States that request authorization of their State sewage sludge management program.
Federal government	EPA regional offices that approve State sewage sludge management programs.
Local government	Owners and operators of treatment works treating domestic sewage.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in parts 123 and 501 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding ''FOR FURTHER INFORMATION CONTACT'' section.

Information in the preamble is organized as follows:

I. Background
A. Water Quality Act of 1987
B. EPA's Sewage Sludge Management Program
II. Discussion of Proposed Rule
A. General
B. Part 123
C. Part 501
III. Regulatory Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Unfunded Mandates

I. Background

Implementation of the Clean Water Act (CWA) has increased the extent to which wastewater is treated before being discharged to surface waters. At publicly owned treatment works (POTWs), implementation of secondary and advanced treatment requirements under the NPDES Program has improved effluent quality while increasing the amount of sewage sludge being generated. Proper management of this growing amount of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater become more effective.

Several options exist for dealing with these vast quantities of sewage sludge. One such option is beneficial use. EPA considers sewage sludge a valuable resource since it contains nutrients and has physical properties that make it useful as a fertilizer and soil

conditioner. Sewage sludge has been used for its beneficial qualities on agricultural lands, in forests, for landscaping projects, and to reclaim strip-mined land. EPA will continue to encourage such practices.

Regulation of the use or disposal of sewage sludge is important, however, because improper use or disposal can adversely affect surface water, ground water, wetlands, and public health through a variety of exposure pathways. The multi-media nature of the risks and exposure pathways requires a comprehensive approach to protect public health and the environment in order to promote the beneficial use of sewage sludge and ensure that solving problems in one medium will not create problems for another.

EPA recognizes that the term ''biosolids'' is now being used by professional organizations and other stakeholders in place of ''sewage sludge'' to emphasize that it is a resource that can be recycled beneficially. EPA intends to work with these stakeholders to establish a definition for ''biosolids'' that is consistent with the definition of ''sewage sludge'' in the CWA. In the meantime, EPA encourages the use of the term ''biosolids'' in order to promote beneficial use of residuals of wastewater treatment.

A. Water Quality Act of 1987

Section 406 of the Water Quality Act of 1987, which amended section 405 of the CWA, established a comprehensive program for reducing the risks to public health and the environment from the use or disposal of sewage sludge, including promulgation of sewage sludge standards. Furthermore, the 1987 amendments required that all NPDES permits issued to POTWs and other treatment works treating domestic sewage (TWTDS) contain conditions implementing sewage sludge standards, unless such conditions are included in other permits. The other permits may either be other federal permits or State permits issued under approved State programs. The amendments also provided that the Administrator may issue separate sewage sludge permits to TWTDS that are not subject to section 402 of the CWA or to any of the other listed permit programs. Moreover, the amendments provided that the standards for use or disposal are enforceable directly against any user or disposer of sewage sludge under section 405(e) of the CWA. In other words, a TWTDS, as well as any user or disposer, must comply with the standards by the statutory compliance deadlines whether or not a permit incorporating the standards has been issued to the TWTDS.

B. EPA's Sewage Sludge Management Program

In 1989, EPA published regulations that establish the requirements and procedures a State must follow to obtain approval to operate a State sewage sludge management program under section 405(f)(1) of the CWA. These regulations established the requirements for States that chose to implement their sewage sludge programs through existing State National Pollutant Discharge Elimination System (NPDES) programs (40 CFR part 123) as well as requirements for States that chose non-NPDES sewage sludge programs (40 CFR part 501) as the vehicle for managing sewage sludge in their States. These regulations also revised the NPDES permit requirements and procedures (parts 122 & 124) to incorporate sewage sludge permitting requirements. See 54 FR 18716 (May 2, 1989). On February 19, 1993 (58 FR 9404) these regulations were modified to allow for phased permit application submittal procedures. The basic requirements and procedures for States which seek EPA approval to administer a sewage sludge management program are the same under Part 123 and Part 501. EPA published the requirements in both places based on the belief that States that choose to add sewage sludge to their NPDES program would find it easier if the requirements and approval procedures for the sewage sludge program were included along with the other NPDES requirements in Part 123.

State assumption of the sewage sludge program is optional and until State sewage sludge programs are authorized, EPA will administer the program. Two States (Utah and Oklahoma) have been authorized at this time. EPA is working with a number of other States seeking authorization for the federal sewage sludge permit and management program.

In discussions with these States, EPA found that the sewage sludge management program regulations were often a barrier to authorization. Given the wide and successful regulation of sewage sludge use or disposal by a number of States, EPA undertook a review of its regulations looking at ways to simplify the approval process.

In order to provide greater flexibility to the States, EPA is proposing modifications to its sewage sludge management program regulations that accommodate more variations in State programs. EPA stresses that its willingness to allow greater variation in the State permit programs does not mean that the Agency will approve State programs that do not provide adequate public health and environmental protection.

II. Discussion of Proposed Rule

A. General

EPA started the process that led to today's proposal by reviewing information provided by States with active State sewage sludge programs. EPA then solicited input on two successive draft proposals from various stakeholders, including States, associations and environmental groups. Today's proposal is an outgrowth of that process and incorporates many of the comments received on both drafts. EPA today proposes changes to Parts 123 & 501 that will provide more flexibility to States and ease the process of authorization. Under the current regulations, States that choose to implement sludge requirements through their NPDES program must meet the requirements and follow the procedures in Part 123. States that want to obtain approval for an existing non-NPDES program must comply with the procedures and requirements in Part 501. However, these requirements for authorization under an NPDES or other type of program are very similar.

As part of an overall effort to eliminate unnecessary regulations, EPA is today proposing to delete the provisions of Part 123 that contain State program requirements applying solely to sewage sludge. Under today's proposal, States seeking approval to operate a State sewage sludge management program under section 405(f)(1) would meet the requirements and procedures in Part 501 when submitting sewage sludge management programs. A State would be free to operate an approvable sewage sludge management program as part of its existing State NPDES regulatory program or as part of its State solid waste management program or as part of another program. The requirements and procedures for approval are the same. Today's proposal is not intended to preclude States from amending their existing, approved NPDES programs to include sewage sludge. In fact, EPA believes that many States will choose this route when they seek approval of their sewage sludge programs. States that intend to rely on their existing NPDES programs for regulation of sewage sludge may need to modify their program to comply with Part 501.

All sewage sludge programs approved under Part 501 must provide for citizen suits and public participation in state enforcement proceedings, whether a

State program is managed through an NPDES program or not. Section 501.17(d) contains the same requirements for public participation in State enforcement proceedings as § 123.27(d). Section 505 of the CWA allows citizen suits to be brought for any violation of Part 503 or an equivalent State regulation.

Because existing Part 501 was modeled on the NPDES program, States that manage their sewage sludge through solid waste or other programs may have difficulties in meeting some of its procedural requirements because these programs have different requirements. Today's proposal modifies some of the requirements in Part 501 to make it easier for States with well-run sewage sludge programs to obtain approval for their programs.

B. Part 123

Part 123 establishes the program requirements and approval procedures for States that seek EPA approval to administer an NPDES permit program pursuant to section 402 of the CWA. Today's proposal would modify Part 123 by deleting certain specific references to sewage sludge requirements in order to make it clear that all State sewage sludge programs (both NPDES and non-NPDES) would be subject to the requirements in Part 501. The deleted references occur in §§ 123.1, 123.2, 123.22, 123.24 through 123.26, and 123.45. The proposal also amends §§ 123.42, 123.44, and 123.62 through 123.64 to clarify the cross-references in the Part 123 sections that apply to sewage sludge and NPDES State programs.

C. Part 501

1. Purpose and Scope

Section 501.1 describes the general requirements for EPA approval of a State sewage sludge program. Today's proposal would modify § 501.1(b) to explain that Part 501 specifies the requirements and procedures for approval of all State sludge management programs, both NPDES and non-NPDES.

Section 501.1(d)(1) and the rest of paragraph (d) have been renumbered because the existing text does not have a § 501.1(d)(2). Section 501.1(d)(1) currently requires a State sludge management program to have the authority to address sewage sludge transport and storage. Today's proposal would delete this requirement because there are no Federal standards that regulate the storage of sewage sludge for less than two years or sewage sludge transport. Where sewage sludge remains on the land for longer than two years, it is deemed to be surface disposal rather than storage under 40 CFR 503.20(b) and is regulated under Part 503. EPA is considering development of a guidance document to provide information on appropriate sewage sludge storage methods.

The existing language in this section includes a requirement for State sewage sludge programs to include Federal facilities. This requirement is not being changed in today's proposal. A State does not have to have Federal facility authority for NPDES in order for its sewage sludge program to be approved. If a State does not have Federal facility authority, these facilities would be regulated under a non-NPDES program, whether or not other facilities are regulated under NPDES.

The proposed language in this section would clarify that a State must have the authority to regulate only those sewage sludge management activities covered by Part 503. A State would not need the authority to regulate a practice not covered by Part 503, such as making bricks out of sewage sludge. The current § 501.1(d)(1)(ii) contains a list of the covered sewage sludge use or disposal practices. For consistency with the terminology used in Part 503, today's proposal would delete the phrase ''distribution and marketing'' since this sewage sludge use is regulated as ''land application,'' and clarify that ''landfilling'' takes place at ''municipal solid waste landfills.'

Existing § 501.1(d)(1) contains a reference to a nonexistent section—40 CFR 123.30. Today's proposal replaces this with a reference to a new paragraph (m) that is added to this section. Proposed § 501.1(m) describes the requirements for a partial sewage sludge program.

CWA Section 405(f) authorizes the Administrator to approve State programs which assure compliance with section 405 requirements. Pursuant to this authority, EPA is proposing in today's notice to allow partial sewage sludge management programs under Part 501. Proposed § 501.1(m) would allow a State to submit a partial sewage sludge management program covering one or more of the sludge use and disposal practices falling under the jurisdiction of the administering State agency or department. The State agency seeking program approval would be required to assume a complete permitting program with respect to the covered practice(s). Some States regulate septage use and disposal under different management programs than sewage sludge. In the case of those States, EPA would approve a partial program for land application, for example, that regulated only sewage sludge and excluded septage from its regulatory scope.

Section 405(f)(1) of the Clean Water Act (CWA) requires that any NPDES permit issued to a publicly owned treatment works or other treatment works treating domestic sewage must include conditions to implement the sewage sludge regulations issued under Section 405(d) unless these conditions have been included through certain other specified permits, including permits under a State permit program if EPA determines ''such programs assure compliance with any applicable requirements'' of section 405. The provisions of current § 501.1(c)(2) require that any complete sludge management program submitted for approval must include such authority. EPA is proposing to implement its approval of partial programs in the same manner. An approvable partial program must include the authority to permit both POTWs and other treatment works associated with the identifiable use and disposal option for which the State seeks authorization.

With respect to the practice(s) covered by the partial program, the State agency would be required to meet the requirements of CWA section 405, and would have to be able to implement the applicable requirements of 40 CFR part 503. The State must be able to clearly identify who falls within the State program, and there must be no area in which authority over a particular group is unclear.

The proposal would also clarify requirements for the partial program with respect to the Attorney General's Statement, the Program Description, and the Memorandum of Agreement (MOA) between EPA and the State.

In addition to the information required for the Program Description under § 501.12, the State submission would have to explain how the program will operate, including the relationship between the partial program and the unassumed part which would remain under EPA control. In addition to the information required for the MOA under § 501.14, the State submission would have to delineate responsibilities of both the State and EPA in administering the partial program.

2. Definitions

Today's proposal adds a definition of ''TWTDS,'' the acronym for ''treatment works treating domestic sewage.'' The acronym replaces the phrase throughout the regulation.

3. Program Description

In order to ensure that a State program can be properly run, § 501.12 requires a description of various program elements. EPA does not believe the current level of detail is necessary. Today's proposal would revise the language in §§ 501.12(b) and 501.12(d) to contain the information that EPA believes is necessary in a program description.

The current language in §§ 501.12(b)(2) and (3) requests information on program costs and funding sources for a program's first two years. This information is necessary to show that a State has the resources to properly carry out a new sewage sludge management program. Many States have had programs established for many years. For States that have at least 2 years of active experience implementing a sewage sludge regulatory program, cost and funding information is not necessary since they have already shown that they have the necessary resources to run effective programs. The proposed language would require this information only for State programs that have been in existence for less than two years.

The current language in § 501.12(d) requires submittal of forms that the State intends to use in its program.

EPA wants to ensure that the required information is collected but does not require use of specific forms. Therefore, the proposed language would require either submittal of forms or the procedures used for obtaining information.

EPA agrees with several commenters that States should have an inventory of all TWTDS but should not be required to develop an inventory of land application sites. The language in proposed § 501.12(f) has been modified accordingly.

4. Memorandum of Agreement With the Regional Administrator

The proposed changes to § 501.14(a) would clarify that the Regional Administrator approves the memorandum of agreement (MOA).

The proposed change to § 501.14(b)(1)(i) would clarify that permit-related information is only transferred from EPA to a State with respect to the portion of the State program for which the State has obtained approval. For example, if a State were seeking a partial program for land application, information on pending permit applications or compliance information for incinerators would not be transferred to the State.

The other changes in § 501.14(b) would delete some of the current waiver prohibitions. EPA believes that waiver of review of permits for ''Class 1 sludge management facilities'' is an issue that should be decided by the affected State and EPA Regional office. EPA believes that the Regional Administrator should be able to terminate a waiver, but only after providing a written explanation of the reason for the termination.

The current language in § 501.14(c) requires all permit related documents to be sent to EPA. The proposed language would require documents to be sent only when requested by EPA. This would eliminate the transmission of documents that EPA does not intend to review. This change would not reduce EPA's ability to obtain any permit related documents. Section 501.19 requires compliance with § 123.41, the NPDES section that requires a State to make available to EPA ''any information obtained or used in the administration of a State program'.

Section 501.14 also States that the Regional Administrator will normally notify the State at least 7 days before an EPA facility inspection. Today's rule would delete that language and allow the region and State to decide whether such a time period should be included in the MOA.

5. Requirements for Permitting

The current provisions of § 501.15 describe the procedural requirements that a State must follow in issuing permits in order to obtain EPA authorization to operate a section 405(f) sewage sludge management program. Many States operate well-managed sewage sludge programs that are organized differently than the NPDES model. EPA believes that the specific permitting requirements prescribed in § 501.15 are not always necessary to ensure compliance with the part 503 regulations and may have provided unnecessary obstacles to authorization of State sludge management programs. EPA considered removing the majority of these requirements from § 501.15. However, a number of States have laws that prohibit the State's adoption of more stringent requirements than EPA. EPA is concerned that removal of these permitting procedural requirements—a move aimed at simplifying the approval process—may, because of these State law provisions, have the perverse result of requiring a State to modify its existing program in order to obtain EPA approval for the program. In this case, deletion of the permitting requirements could make the authorization process more difficult for some States while easing it for others. EPA is asking for further information on this issue.

Today's proposal would retain most of the requirements for permitting but would allow States to follow their existing practices in many instances. In some cases the Regional Administrator would have to decide whether the State's procedural requirements are comparable to those required by this provision. EPA recognizes that this may result in inconsistency in State program implementation, but believes that procedural inconsistency is not a significant concern in this program and that the added flexibility far outweighs any potential problems. EPA requests comments on this approach.

EPA is proposing to delete § 501.15(a)(2) that contains the specific information requirements for permit applications. Instead, in § 501.15(d)(1)(ii), EPA proposes to require the information listed in 40 CFR 122.21(q). EPA proposed these revised requirements on December 6, 1995 (60 FR 62546). EPA is currently reviewing all comments received on that proposal. As proposed, § 122.21(q) would reduce the burden on permittees by allowing State directors to waive information requirements if they have access to substantially identical information, and by modifying the land application plan requirements to require advance public notice in the manner prescribed by State and local law.

Today's proposal would also remove §§ 501.15(a) (3) and (4) because these requirements are repeated in § 501.15(b). The CWA limits the terms of NPDES permits to no more than five years. Today's proposal would modify current § 501.15(a)(5) to allow a State to issue non-NPDES sewage sludge permits for terms of no more than 10 years. EPA believes this is a good compromise between those who want to limit all sewage sludge permits to 5 years to insure that the permitting authority is aware of changed circumstances and those who believe permits do not need to expire, but should simply be modified if circumstances change. EPA realizes that some States issue permits for longer than 10 years and requests comments on this issue of how best to use scarce resources effectively and insure adequate protection of public health and the environment.

Today's proposal would modify § 501.15(b) to require that all permits issued by the State include the listed permit conditions unless comparable conditions are provided for in the MOA. This would provide flexibility to both the Region and the State. This proposed change is not intended to imply that permittees can choose which conditions to put into permits. EPA recognizes that States have different types of permitting

systems. Some of the permit conditions in § 501.15(b) are established by States as regulatory requirements for all TWTDS. Other conditions are required by 40 CFR part 503. Since all users or disposers of sewage sludge must comply with Part 503 whether or not they have a permit, requirements contained in part 503 do not have to be repeated in a permit to require compliance.

This section also contains several other specific proposed changes. Section 501.15(b)(10) would delete the language that requires a minimum of once per year monitoring. This change is necessary if Part 503 is modified as proposed to allow less than once per year monitoring. This proposal was published on October 25, 1995 (60 FR 54771).

The last sentence in § 501.15(b)(13) would be deleted because this permit condition has already been stated in § 501.15(b)(2). EPA is also proposing to modify § 501.15(b)(14) to clarify that a permittee that has applied for reissuance of a permit does not need to cease operations if the new permit is not issued before the term of an existing permit expires. This provision is consistent with section 558(b) of the Administrative Procedure Act that provides for the continuing effectiveness of permits and licenses when the permittee has filed a timely and sufficient application for renewal.

Today's proposal would modify § 501.15(d) to require the listed permit procedures unless comparable State requirements are in place. This provision would provide flexibility for accommodating varying State requirements that protect public health and the environment.

EPA is proposing to change § 501.15(d)(1)(i) to clarify which TWTDS must apply for a permit. Applications are only required from TWTDS whose use or disposal method is regulated under part 503. A POTW that made bricks out of all of its sewage sludge would not be required to submit an application. An industrial facility (except a privately owned treatment works treating domestic sewage) would also not be required to apply at this time because such facilities are not currently covered by part 503. See 54 FR 18727 and 58 FR 9406.

Permit applications are to be submitted to the State only for a use or disposal practice for which the State has obtained approval to operate a section 405(f) sewage sludge management program. If a State implements a partial program, permit applications for use or disposal practices not covered by the State program must still be submitted to the EPA region.

Finally, if a TWTDS is covered under a State's sewage sludge general permit, it would follow the State's notification procedures rather than submit an individual permit application.

EPA is proposing to delete existing § 501.15(d)(1)(ii)(A). This provision was intended to allow the permitting authority to obtain applications for incinerators and others who requested site-specific pollutant limits before other applications because these permits would take the most time to issue and incinerators were believed to pose the greatest risk to public health. However, there have been few requests for site-specific permits. In addition, proposed changes to Part 503 (60 FR 54771) would make the incineration standard totally self-implementing along with the rest of the rule, i.e., the standard must be met whether or not a permit is issued. Therefore, this paragraph is no longer necessary. As described in § 501.15(d)(1)(ii)(C), the Director may require permit applications from any TWTDS at any time if necessary to protect public health and the environment.

EPA is proposing to redesignate existing § 501.15(d)(1)(ii)(B) as § 501.15(d)(1)(ii)(A) and to change the regulatory citation for the required application information.

EPA is proposing to redesignate existing § 501.15(d)(1)(ii)(C) as § 501.15(d)(1)(ii)(B). This section lists the limited background information requested of non-NPDES TWTDS. EPA is also proposing to modify proposed § 501.15(d)(1)(ii)(B)(3) to be consistent with the full permit information requirements as proposed in § 122.21(q). If sewage sludge meets the ''exceptional quality'' requirements, no additional information is required about land application sites or facilities that further treat the sewage sludge.

Section 501.15(d)(4) currently requires fact sheets for draft permits containing case-by-case permit conditions or land application plans. They are also required for Class I sludge management facilities or draft permits that are the subject of widespread public interest or raise major issues. EPA is proposing to revise this section to require a fact sheet only when a permit is the subject of widespread public interest or raises major issues. In addition, EPA would revise this provision to delete the list of the specific information required to be included in a fact sheet.

EPA is proposing these changes to provide additional flexibility to States in operating their sewage sludge permit programs. EPA believes that the basis for a permit should be available to the public but does not believe that a fact sheet is the only available option. For example, in some States the basis for the permit may be the State's sewage sludge regulations. In this situation a fact sheet would not be necessary.

EPA is proposing to change § 501.15(d)(5) by inserting the phrase ''meeting or hearing'' in place of ''hearing'' throughout the section. This change would simplify the approval process for States whose public participation requirements for permit issuance call for public ''meetings'' rather than ''hearings''. This modification in the regulations would obviate the need in States with such requirements for a change in State law in order to obtain approval.

Today's proposal would modify the requirement that the State provide at least a 30-day comment period on the draft permit. Some States require public notification of a permit application so the public has the opportunity to review the application and request a public hearing before a draft permit is issued. In this situation a 30-day comment period after issuance of a draft permit may not be necessary. Today's proposal would also delete the requirement for 30 days notice before a meeting or hearing. These changes are not intended to suggest that a State should not provide an adequate comment period or adequate advance notice of any hearing or meeting. State law must provide the public both timely and meaningful opportunity to participate in its permitting determinations. This means that a State's procedures must be reasonably calculated to apprise the public of the nature of any proposed permitting action as well as provide the public with an opportunity to submit its view on the proposed permitting action.

Today's proposal is merely intended to allow the States the flexibility to follow their current public notice procedures that may provide for public notice at different times in the permitting process.

Proposed changes to § 501.15(d)(5) would allow the State flexibility in the method used to provide public notice. The MOA could be used to specify required methods, if deemed necessary by an EPA Region.

6. Requirements for Enforcement Authority

EPA is proposing to revise the language of § 501.17 to clarify the intent of the section. A State must have the authority to assess civil penalties or criminal fines in, at least, the amounts listed. States are not required to impose these or any other specific penalties in any civil or criminal proceeding, and

State law may, of course, authorize the imposition of larger penalties.

7. Program Reporting to EPA

The current requirements in § 501.21 require extensive information on noncompliance to be reported semiannually to EPA by the State program director. EPA is attempting to streamline all of its reporting requirements, including the information requested from States. The proposal would reduce the information required from States and would require annual reports that contain only the information that EPA believes would be of most value in reviewing a States's sludge management program.

8. Procedures for Revision of State Programs

The current language in § 501.32 requires a State to revise its program within one or two years of promulgation of changes to the sewage sludge regulations. The proposed change would allow EPA and the State to agree to a different schedule in the MOA. As the MOA is part of the State program submittal, comments on this or any other issue in the MOA can be raised when the State program is public noticed in the Federal Register. Because the sewage sludge regulations are directly enforceable, TWTDS must comply with any new Federal sewage sludge requirements, whether or not the State has modified its regulations to conform with the Federal rule.

III. Regulatory Requirements.

A. Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 12875

Under Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, the Agency is required to develop an effective process to permit elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA began development of today's proposal by soliciting suggested changes from a group of volunteer States. Their suggestions were used to develop a first draft of proposed rule changes that was sent on February 7, 1996 to States, tribes, environmentalists, and other stakeholders. On May 10, 1996, EPA sent out a second draft to the same stakeholders. The comments received on both drafts were used to develop today's rule.

C. Paperwork Reduction Act

The information collection requirements for parts 123 and 501 were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (See OMB 2040–0057, June 14, 1995.) The proposed rule changes are designed to streamline the regulatory process and will not impose any new information collection requirements.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, EPA must prepare a regulatory flexibility analyses for regulations that have a significant impact on a substantial number of small entities.

Today's proposal would only apply to States seeking to obtain EPA authorization for their State sewage sludge permit programs and States are not considered small entities under the RFA. EPA is not proposing to establish any requirements that are applicable to small entities as defined by the statute. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written 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. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or tribal governments or the private sector because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. In any event, 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 or tribal governments or the private sector in any one year. The proposed amendments provide additional flexibility to the States in complying with current regulatory requirements and lesson the burden on affected governments. As noted above, there are no costs associated with the changes proposed today. Thus, today's proposed rule is not subject to the requirements in sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed amendments would not significantly affect small governments because as explained above, the proposed amendments would provide additional flexibility in complying with pre-existing regulatory requirements. The proposed amendments also would not uniquely affect small governments because the increased flexibility provided by the proposed changes would be available to POTWs operated by small governments to the same extent as to other sewage sludge users or disposers.

List of Subjects

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Dated: February 28, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 123 and 501 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 123.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 123.1 Purpose and Scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements States programs must meet to be approved by the Administrator under sections 318, 402, and 405(a) (National Pollutant Discharge Elimination System—NPDES) of the CWA. This part also specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under section 405(f) (sludge management programs) of the CWA. The requirements that a State sewage sludge management program must meet for approval by the Administrator under section 405(f) are set out at 40 CFR part 501.

* * * * *

(c) The Administrator shall approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program.

* * * * *

3. Section 123.2 is revised to read as follows:

§ 123.2 Definitions.

The definitions in Part 122 apply to all subparts of this part.

4. Section 123.22 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

5. Section 123.24 is amended by removing paragraph (d)(8).

6. Section 123.25 is amended by revising the introductory text of paragraph (a) and paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR parts 129, 133, and subchapter N.

* * * * *

7. Section 123.26 is amended by revising paragraph (e)(5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(5) Inspecting the facilities of all major dischargers at least annually.

8. Section 123.42 is amended by revising the introductory paragraph to read as follows:

§ 123.42 Receipt and use of Federal Information.

Upon approving a State permit program, EPA shall send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14) shall provide for the following, in such manner as the State Director and the Regional Administrator shall agree:

* * * * *

9. Section 123.44 is amended by revising paragraphs (d)(1), (d)(2), (e), and (j) to read as follows:

§ 123.44 EPA review of and objection to State permits.

* * * * *

(d)* * *

(1) Shall consider all data transmitted pursuant to § 123.43 (or, in the case of a sewage sludge management program, § 501.21);

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.43 (or, in the case of a sewage sludge management program, § 501.21), it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions of the record; and

* * * * *

(e) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of § 124.12 (c) and (d) (or, in the case of a sewage sludge management program, § 501.15(d)(7)) shall be held, and public notice provided in accordance with § 124.10, (or, in the case of a sewage sludge management program, § 501.15(d)(5)), whenever requested by the State or the interstate agency which proposed the permit or if warranted by significant public interest based on requests received.

* * * * *

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14), to review draft permits rather than proposed permits. In such a case, a proposed permit need not

be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.

10. Section 123.45 is amended by removing paragraph (e).

11. Section 123.62 is amended by revising paragraphs (b)(3), and (c) to read as follows:

§ 123.62 Procedures for revision of State programs.

* * * * *

(b)* * *

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this part (or, in the case of a sewage sludge management program, 40 CFR part 501) and of the CWA.

* * * * *

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) (or, in the case of a sewage sludge management program, § 501.12(b)) shall be revised and resubmitted.

* * * * *

12. Section 123.63 is amended by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

§ 123.63 Criteria for withdrawal of State programs.

(a) In the case of a sewage sludge management program, references in this section to ''this part'' shall be deemed to refer to 40 CFR part 501. The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

* * * * *

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.24 (or, in the case of a sewage sludge management program, § 501.14).

* * * * *

13. Section 123.64 is amended by revising the introductory text of paragraph (a) and paragraph (b)(1) to read as follows:

§ 123.64 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part (or, in the case of a sewage sludge management program, 40 CFR Part 501) may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

* * * * *

(b) * * *

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in § 123.63 (or, in the case of a sewage sludge management program, § 501.33). The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

* * * * *

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

14. The authority citation for part 501 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

15. Section 501.1 is amended by revising paragraphs (b) and (d), and adding paragraph (m) to read as follows:

§ 501.1 Purpose and scope.

* * * * *

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under section 405(f), and the requirements State programs must meet to be approved by the Administrator under section 405(f) of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part.

* * * * *

(d) In addition, any complete State Sludge Management Program submitted for approval under this part shall have authority to address all sewage sludge management activities used in the State that are practiced or planned to be practiced in the State and are covered by 40 CFR part 503, unless the State is applying for partial sludge program approval in accordance with paragraph (m) of this section. The State sludge management program shall also be applicable to all federal facilities in the State. Sludge management activities shall include as applicable:

(1) Land application,

(2) Landfilling in a Municipal Solid Waste Landfill regulated under 40 CFR part 258,

(3) Incineration,

(4) Surface disposal, and

(5) Any other sludge use or disposal practices as may be regulated by 40 CFR part 503.

* * * * *

(m) A State whose sludge permitting program has not been approved under part 501 may submit to the Regional Administrator an application for approval of a partial sewage sludge program that meets the following requirements:

(1) A partial program submission must constitute a complete permitting program covering one or more categories of sewage sludge use or disposal. A complete permitting program includes the issuance of permits, the monitoring of compliance and, in the event of violations, enforcement action for all TWTDS engaging in the sewage sludge use or disposal practice that is the subject of the partial program.

(2) The partial program submission must also address the following requirements:

(i) The Attorney General's Statement, in addition to the information required by § 501.13, must clearly explain the jurisdiction of the administering agency or department;

(ii) The program description, in addition to the information required by § 501.12, must explain in detail how the program will operate, including which use and disposal practice(s) the State will cover. The program description must also explain the relationship and coordination between the proposed partial sewage sludge program and that part of the program for which EPA will remain the permitting authority, including a discussion of the division of

permitting, enforcement, and compliance monitoring responsibilities between the State and EPA; and

(iii) The Memorandum of Agreement between EPA and the State, in addition to the information required by § 501.14, must set out in detail the responsibilities of EPA and the State in administering the partial program, including specific provisions for transfer of information and determination of which TWTDS are included in the partial program.

16. Section 501.2 is amended by adding a definition to read as follows:

§ 501.2 Definitions.

* * * * *

''TWTDS'' means treatment works treating domestic sewage.

17. Section 501.12 is amended by revising paragraphs (b), (d), (f)(1)(iv), (f)(1)(v), and (f)(2), and removing paragraph (f)(3) to read as follows:

§ 501.12 Program description.

* * * * *

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program. If more than one agency is responsible for administration of a program, the responsibilities of each agency, and their procedures for coordination must be set forth, and an agency must be designated as a ''lead agency'' (i.e., the ''State sludge management agency'') to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program. This description shall include:

(1) A description of the general duties and the total number of State agency staff carrying out the State program;

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval including cost of the personnel described in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support, except where a State is seeking authorization for an established sewage sludge management program that has been in existence for a minimum of two years and is at least as stringent as the program for which the State is seeking authorization; and

(3) An estimate of the sources and amounts of funding for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, except where a State is seeking authorization for an established sewage sludge management program that has been in existence for a minimum of two years and is at least as stringent as the program for which the State is seeking authorization.

* * * * *

(d) Copies of the permit, application, and reporting forms or procedures the State intends to employ in its program.

* * * * *

(f)(1) * * *

(iv) NPDES, UIC, RCRA, Clean Air Act, and State permit number, if any, and;

(v) Compliance status.

(2) States may submit either:

(i) Inventories which contain all of the information required by paragraph (f)(1); or

(ii) A partial inventory with a detailed plan showing how the State will complete the required inventory within five years after approval of its sludge management program under this part.

* * * * *

18. Section 501.14 is amended by revising paragraphs (a), (b)(1)(i), (b)(2), (b)(3), and (c) to read as follows:

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Program Director and the Regional Administrator and shall become effective when approved by the Regional Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's oversight responsibility.

(b) * * *

(1)(i) Provisions for the prompt transfer from EPA to the State of pending permit applications applicable to the State program and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the federal government, a procedure may be established to transfer responsibility for these permits.

* * * * *

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection. These provisions shall follow the permit review procedures set forth in 40 CFR 123.44.

(3) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits.

* * * * *

(c) The Memorandum of Agreement shall also provide for the following:

(1) The circumstances in which the State must promptly send notices, draft permits, final permits, or related documents to the Regional Administrator; and

(2) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(3) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (see for example 40 CFR 124.4).

(4) Provisions for modification of the Memorandum of Agreement in accordance with this part.

* * * * *

19. Section 501.15 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(10)(i), (b)(13), (b)(14), the introductory text of paragraph (d), paragraph (d)(1), and (d)(4) through (d)(8), to read as follows:

§ 501.15 Requirements for permitting.

(a) *General requirements.* All State programs under this part shall have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* Claims of confidentiality shall be denied for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and sewage sludge data. This includes information submitted on the permit application forms themselves and any attachments used to supply information required by the forms.

(2) *Duration of permits.* (i) NPDES permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA shall be effective for a fixed term not to exceed five years.

(ii) Non-NPDES Permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA shall be effective for a fixed term not to exceed ten years.

(3) *Schedules of compliance*—(i) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and the requirements of this part. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than any applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the date for their achievement. The time between interim dates shall not exceed six months.

(iii) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) of this section is applicable.

(b) *Conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet applicable requirements of 40 CFR part 503, paragraphs (a)(1) through (3) of this section, and permit conditions developed on a case-by-case basis using best professional judgment to protect public health and the environment from the adverse effects of toxic pollutants in sewage sludge, all permits shall contain the following permit conditions (or comparable conditions as provided for in the Memorandum of Agreement):

* * * * *

(10) *Monitoring and records.* (i) The permittee shall monitor and report monitoring results as specified elsewhere in this permit with a frequency dependent on the nature and effect of its sludge use or disposal practices. At a minimum, this shall be as required by 40 CFR part 503.

* * * * *

(13) *Reopener.* If a standard for sewage sludge use or disposal applicable to permittee's use or disposal methods is promulgated under section 405(d) of the CWA before the expiration of this permit, and that standard is more stringent than the sludge pollutant limits or acceptable management practices authorized in this permit, or controls a pollutant or practice not limited in this permit, this permit may be promptly modified or revoked and reissued to conform to the standard for sludge use or disposal promulgated under section 405(d) of the CWA.

(14) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

* * * * *

(d) *Permit procedures.* All State programs approved under this part shall have the legal authority to implement, and be administered in accordance with, each of following provisions, unless the Regional Administrator determines that the State program includes comparable or more stringent provisions.

(1) *Application for a permit.* (i) Any TWTDS whose sewage sludge use or disposal method is covered by 40 CFR part 503 and covered under the State program, except TWTDS covered by sewage sludge general permits, shall complete, sign, and submit to the Director an application for a permit within the time specified in paragraph (d)(1)(ii) of this section.

(ii)(A) TWTDS with a currently effective NPDES permit must submit the application information required by 40 CFR 122.21(q) when the next application for NPDES permit renewal is due.

(B) Other existing TWTDS not addressed under paragraph (d)(1)(ii)(A) of this section must submit the information listed in paragraphs (d)(1)(ii)(B)(1) through (5) of this section, to the Director within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s). The Director shall determine when such TWTDS must submit a full permit application.

(*1*) Name, mailing address and location of the TWTDS;

(*2*) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

(*3*) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of 40 CFR 122.21(q)(8)(iv), the description shall include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(*4*) Annual amount of sewage sludge generated, treated, used or disposed (dry weight basis); and

(*5*) The most recent data the TWTDS may have on the quality of the sewage sludge.

(C) Notwithstanding paragraph (d)(1)(ii)(A) or (B) of this section, the Director may require permit applications from any TWTDS at any time if the Director determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(D) Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(iii) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

* * * * *

(4) *Fact sheets.* A fact sheet shall be prepared for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(5) *Public notice of permit actions and public comment period.* (i) The Director shall give public notice that the following actions have occurred:

(A) A draft permit has been prepared. At least 30 days shall be allowed for public comment on the draft permit unless there has been a previous public comment period such as during the permit application.

(B) A meeting or hearing has been scheduled.

(ii) *Methods.* Public notice of activities described in paragraph (d)(5)(i) of this section shall be given in the area affected by these activities by any method reasonably calculated to

give actual notice of the action in question to any person potentially affected or requesting notice of the action, including publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity, press releases, or any other forum or medium to elicit public participation.

(iii) *Contents*—(A) *All public notices.* All public notices issued under this part shall contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(*3*) A brief description of the activity described in the permit application (including the inclusion of land application plan, if appropriate);

(*4*) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application;

(*5*) A brief description of the comment procedures required by § 501.15(d)(6) and the time and place of any meeting or hearing that will be held, including a Statement of procedures to request a meeting or hearing (unless a meeting or hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for meetings or hearings.* In addition to the general public notice described in paragraph (d)(5)(iii)(A) of this section, the public notice of a meeting or hearing shall contain the following information:

(*1*) Date, time and place of the meeting or hearing; and

(*2*) A brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public meetings or hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public meeting or hearing, if no meeting or hearing has already been scheduled. A request for a public meeting or hearing shall be in writing and shall State the nature of the issues proposed to be raised in the meeting or hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (d)(8) of this section.

(7) *Public meetings or hearings.* The Director shall hold a public meeting or hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public meeting or hearing at his or her discretion, (e.g., where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director shall issue a response to comments. The response to comments shall be available to the public, and shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any meeting or hearing.

* * * * *

20. Section 501.17 is amended by revising paragraphs (a)(3) and (b)(1) to read as follows:

§ 501.17 Requirements for enforcement authority.

(a)* * *

(3)* * *

(i) Civil penalties shall be recoverable for the violation of any permit condition; any applicable standard or limitation; any filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. The State shall at a minimum, have the authority to assess penalties of up to $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. The State shall at a minimum, have the authority to assess fines of up to $10,000 a day for each violation. States which provide the criminal remedies based on ''criminal negligence,'' ''gross negligence'' or strict liability satisfy the requirement of this paragraph (a)(3)(ii).

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false Statement, representation or certification in any program form, or in any notice or report required by a permit or State Program Director, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. The State shall at a minimum, have the authority to assess fines of up to $5,000 for each instance of violation.

(b)(1) The civil penalty or criminal fine shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

* * * * *

21. Section 501.21 is revised to read as follows:

§ 501.21 Program reporting to EPA.

The State Program Director shall prepare annual reports as detailed in this section and shall submit any reports required under this section to the Regional Administrator. These reports shall serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on incidents of noncompliance. The State Program Director shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The reports specified in this section may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate and shall include the following:

(a) A summary of the incidents of noncompliance which occurred in the previous year that includes:

(1) The non-complying facilities by name and reference number;

(2) The type of noncompliance, a brief description and date(s) of the event;

(3) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance;

(4) Status of the incident(s) of noncompliance with the date of resolution; and

(5) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(1) Name and location;

(2) NPDES, UIC, RCRA, Clean Air Act, and State permit number, if any;

(3) Sludge management practice(s) used; and

(4) Sludge production volume.

22. Section 501.32 is amended by revising paragraph (a) to read as follows:

§ 501.32 Procedures for revision of State programs.

(a) Any approved State program which requires revision to comply with

amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) shall revise its program within one year after promulgation of applicable regulations, unless either the State must amend or enact a statute in order to make the required revision, in which case such revision shall take place within 2 years; or a different schedule is established under the Memorandum of Agreement.

* * * * *

[FR Doc. 97–5879 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
March 11, 1997

Part V

Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grant Program for States; Revisions to Program Income Requirements and Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4067–P–01]

RIN 2506–AB82

Community Development Block Grant Program for States; Revisions to Program Income Requirements and Miscellaneous Amendments; Notice of Proposed Information Collection Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule contains proposed changes to several sections of the regulations for the Community Development Block Grant (CDBG) Program for States. This proposed rule would streamline and update the regulations with regard to recent statutory changes, clarify the program income requirements, and correct other identified deficiencies in the State CDBG regulations. This proposed rule would also provide States additional flexibility in their administration of the program.

DATES: Comments due date: May 12, 1997.

ADDRESSES: HUD invites interested persons to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

HUD also invites interested persons to submit comments on the proposed information collection requirements in this proposed rule. Comments must refer to the above docket number and title, and must be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Assistant Director, State & Small Cities Division, Room 7184, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708–1322 (this number is not toll-free). Hearing- or speech-impaired persons may access the number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries (but not comments on the rule) may be sent to Mr. Johnson at (202) 708–2575 (this number is not toll-free).

SUPPLEMENTARY INFORMATION

Background

This proposed rule would revise the regulations for the State Community Development Block Grant Program (24 CFR part 570) to respond to problems HUD has identified in the program, to implement a 1992 statutory change to the Housing and Community Development Act of 1974 (the Act) (42 U.S.C. 5301–5320), to implement changes resulting from the Cash Management Improvement Act, and to provide additional flexibility to States in implementing their programs. Specifically, this rule contains: (1) Proposed changes to the requirements governing Federal grant payments to States; (2) Various proposed changes to the program income requirements, including the situations in which income earned on grant funds must be remitted to the U.S. Treasury; (3) A proposed change regarding revolving funds; (4) The proposed application of the Entitlement regulations governing lump-sum drawdowns to the State program; (5) The proposed application of the Entitlement regulations governing the use of escrow accounts for rehabilitation of residential properties to the State program; (6) A proposed change to the conflict of interest requirements; (7) A proposed change regarding use of CDBG funds outside the jurisdiction of the recipient; and (8) A proposed change to the general provisions regarding a State's administrative flexibility. Each of these proposed changes is described below.

Federal Grant Payments

Section 570.489(c) of the State CDBG regulations describes the requirements concerning Federal grant payments to States. Pursuant to the Treasury Department's regulations in 31 CFR part 205, States and units of general local government must minimize the elapsed time between receipt of Federal funds and their disbursement for grant activities. This regulation was based on the provisions of the Intergovernmental Cooperation Act (31 U.S.C. 6503).

The Intergovernmental Cooperation Act has been superseded by the Cash Management Improvement Act of 1990, as amended in 1992 (31 U.S.C. 3335, 6503), which made several fundamental changes to the manner of Federal-State payments. The Treasury Department amended the implementing regulations in 31 CFR part 205 on December 21, 1992 (57 FR 60676). Under the new regulations, States and the Treasury Department enter into agreements covering all Federal programs over a certain threshold funding level. Through these agreements, States select specific payment techniques that are designed to prevent delays between drawdown and disbursement of funds. For programs that are below the threshold, States must use alternative procedures to prevent delays between drawdown and disbursement of funds. In 1995, only two States' CDBG allocations fell below the threshold.

Section § 570.489(c)(2) of the State CDBG regulations provides that interest earned by units of local government on funds held pending disbursement is not program income, and they must generally return such interest to the U.S. Treasury. The paragraph further provides, however, that States generally do not have to return interest earned during the time between receipt of funds and disbursement to local governments.

The December 21, 1992 amendments to 31 CFR part 205 render some of § 570.489(c) obsolete. Therefore, rather than repeat the requirements for States in the State CDBG regulations, § 570.489(c) of this proposed rule would simply refer to the more detailed requirements in 31 CFR part 205. However, this proposed rule would retain the existing requirement that States ensure that units of local government also minimize the time between receipt of CDBG funds and their disbursement, by moving the provision to the program income requirement section (§ 570.489(e)). This proposed move is further discussed in the Program Income Requirements section of this preamble, below.

Program Income Requirements

The proposed changes to the program income provisions that are described in this section of the preamble respond to the amendments of the Housing and Community Development Act of 1992 (the 1992 Act) (Pub. L. 102–550, approved October 28, 1992; 106 Stat. 3672), HUD Inspector General recommendations, and an opinion issued by the Comptroller General of the United States.

Implementation of 1992 Statutory Amendments

The State CDBG regulations currently provide for several situations in which program income received by a unit of

general local government after closeout of its grant from the State would not be subject to the program income requirements in § 570.489(e). However, the 1992 Act amended section 104(j) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(j)) to provide that the use of program income must be governed by all normal CDBG program requirements for as long as the program income exists. (Another statutory change, along with several regulatory initiatives, was reflected in the CDBG Program Economic Development Guidelines final rule, published on January 5, 1995 (60 FR 1922)). At that time, HUD noted that further regulatory changes were forthcoming to implement fully the 1992 amendments to the Act. With this amendment in the 1992 Act regarding post-closeout program income, Congress intended to expand the coverage of program requirements to all repayments that are classified as program income. This amendment applies to all program income generated by grants made by States from funds in Fiscal Year (FY) 1993 and later.

A major problem that States face in implementing the statutory amendment is that a community may continue to generate and use program income long after the initially-funded activity is completed. States generally close out grants to local governments upon completion of the initially-funded activities, though closeouts may be conditioned upon the satisfactory completion of certain other actions, such as submission of an audit or fulfillment of job creation requirements. This new statutory provision significantly extends States' responsibilities in tracking program income. To provide as much flexibility as possible within the constraints of the law, HUD proposes to allow States to demonstrate compliance with this requirement in the following ways:

(1) States may maintain contractual relationships with units of general local government for as long as there is program income to be tracked. Since, in some cases, receipt of program income by a local government may be sporadic, a State could craft its contractual agreements so that they terminate once a local government has exhausted its program income, and re-activate upon receipt of new program income at some future date.

(2) States may require local governments to obtain advance State approval of a local plan to expend program income, in the absence of a more formal contractual relationship. This arrangement may be well-suited for States that presently use a ''conditional closeout'' process, in which a grant recipient has program income on hand at the time of grant closeout or receives program income after closeout of the grant that generated the program income.

(3) States may seek HUD approval of an alternative method for demonstrating compliance. HUD intends that field offices, not Headquarters, would grant such approval.

States may select different approaches for different types of grant recipients. For example, a State that distributes some of its funds on a formula basis and some on a competitive basis might select option number 1, above, for those units of local government that receive funding every year, and option number 2 for other grant recipients. A State might also blend the first two options by requiring a plan for the use of program income by local governments as part of its contractual agreement with units of general local government.

Program income is a significant resource in the State CDBG program, and it constitutes a major multiplier of the benefits that the CDBG program provides to citizens and beneficiaries. For example, during Fiscal Years 1992–1994, the cumulative amount of program income received by all States averaged over $43.2 million per year; that is more than double the average yearly allocation amount to States during that period ($20.2 million). This represents only that portion of program income that was returned to the States by units of general local government. HUD has not previously required States to report on program income retained at the local level. However, consistent with the 1992 amendments, HUD now proposes in § 570.489(e)(4) to require States' annual performance reports to include the use of program income held by local governments.

HUD recognizes that implementation of this statutory change may significantly affect the reuse of a large dollar volume of income retained by local governments. Because States have not previously reported to HUD on locally-retained income (whether classified as program income or as miscellaneous revenue), HUD cannot accurately predict the financial implications of this proposed rule change. HUD welcomes comments on the amount of income that will now be subject to program income requirements, and on resulting effects on what such funds are used for.

Continuing Applicability of Previous Regulations

In the last few years, there have been a succession of regulatory changes to the State CDBG program income requirements. Presently, States must administer multiple sets of requirements, each of which applies to program income received during different time periods. Program income received prior to December 9, 1992 was subject to the requirements laid out in various policy memoranda issued subsequent to the issuance of amended State CDBG regulations on April 8, 1982 (47 FR 15297). HUD formalized those policies in a final rule published in the Federal Register on November 9, 1992 (57 FR 53397). Program income generated from grants made by States with Fiscal Year 1993 and later funds is subject to the 1992 statutory amendments as well as the requirements of the November 9, 1992 final rule. Finally, the January 5, 1995 CDBG Program Economic Development Guidelines final rule (60 FR 1922) included an expanded list of revenues that are not considered program income.

States have reported that tracking different requirements as they apply to different funding years is complicated and time-consuming, especially for program income retained at the local level. Repayments of loans made from one grant to a given community may be subject to different requirements than repayments of loans made from a subsequent year's grant to the same community. This results in an increased record-keeping burden on both the State and local governments. The complexity and burden are compounded when program income is used to make additional loans, which, in turn, generate more program income. It is not clear to some States whether program income is subject to the requirements in effect at the time the State awarded the initial grant to the locality, or to the requirements in effect when the program income is received.

To address this confusion, HUD is proposing to clarify the continuing applicability of previous program income requirements to program income retained by localities. (The problem does not occur with program income returned to States for redistribution. Since State-held program income is redistributed according to the method of distribution in effect at the time that it is redistributed, such program income is treated the same as a State's regular allocation of funds for that year; this includes being subject to the same other CDBG program requirements.) This proposed rule would provide that program income that results from an activity funded from FY 1992 and earlier funds remains subject to the requirements as they currently exist. The new provision in this proposed rule

would apply to FY 1993 and later funds. If a local government commingles program income from pre-1993 grants with program income from a newer grant, the new provision in this proposed rule would apply to all the program income, as the local government would not be able to distinguish which income came from which grant.

Some States have reported that reducing the number of different program income requirements would also simplify compliance with the requirements. In response to these suggestions, this proposed rule would provide an alternative to the ''continuing applicability'' provision described in the previous paragraph. States would have the option of applying these new provisions to all program income held by units of local government, regardless of the source year of the funding that generated the program income. Subjecting all outstanding locally-held program income to these proposed requirements would greatly simplify the tracking of program income and would reduce confusion over which set of requirements applies to which program income dollars. However, the proposed requirements would be more restrictive. Application of the new requirements to pre-FY 1993 funding could mean that some funds would be reclassified as program income rather than miscellaneous revenue, which could reduce local governments' flexibility in expending such funds. Furthermore, applying the new rules to previously-generated program income would probably require amending the existing grant contracts with units of local government, which would reduce any staff time savings resulting from simplified tracking of program income.

However, the potential administrative benefits to States and local governments may outweigh the negative impact of reduced local flexibility in enough cases to justify this option. HUD particularly welcomes comments on the practical implications of this option, on the net savings of staff time resulting from the option, and the effects on State grant recipients.

Miscellaneous Improvements and Updates

States have requested several clarifications of the program income requirements, and HUD has discovered other areas that call for regulatory redress. In substantially updating the program income requirements contained in § 570.489(e), HUD is proposing to incorporate the following changes.

(1) Selling off loan portfolios in order to expedite the receipt of program income. In order to maximize available financial resources, communities are increasingly selling portfolios of loans on the secondary market, or selling obligations secured by loan portfolios. Several communities have recently requested HUD's approval to ''net out'' of the proceeds from such sales the various legal and other costs that are incurred when a grantee sells or securitizes a portfolio. There are similarities between such situations and the currently-allowed provision whereby costs incidental to the generation of program income from the rental or use of CDBG-assisted real or personal property may be netted out of the gross income received. Therefore, this proposed rule would amend § 570.489(e)(1) (vi) and (vii) to allow legal and other costs associated with the sale or securitization of CDBG-funded loans to be netted out before the amount of program income is determined. This provision, however, would be limited to costs that are not already eligible as general administrative costs of either the State or the unit of general local government.

(2) $25,000 per year exception. Section 104(j) of the Act allows the Secretary to exempt from the program income requirements amounts that are so small that the tracking thereof would pose an administrative burden. In the CDBG Program Economic Development Guidelines final rule (January 5, 1995; 60 FR 1922), HUD raised this threshold in § 570.489(e)(2) from $10,000 to $25,000 per year per unit of general local government. Some confusion apparently exists over how to apply this threshold. This proposed rule would revise the wording of this paragraph slightly to clarify that this threshold applies only to program income retained by a unit of general local government and its subrecipients; the threshold applies separately to each unit of local government. As with the currently-existing rule, this provision would not apply to program income that a unit of local government earns but returns to the State.

(3) Remission of grant funds. This proposed rule would add § 570.489(e)(2)(v), listing certain types of interest earnings that are not considered to be program income. Two of these provisions would respond to HUD Inspector General findings and implement an opinion of the Comptroller General of the United States that income generated by an ineligible CDBG-assisted activity must be returned to the U.S. Treasury. Since, in the context of the Comptroller General opinion, eligibility includes meeting a national objective, this provision should invoke a sharpened grantee focus on successful outcomes; interest generated from CDBG-funded loans could only be kept by the grantee when the assisted activities meet the national objective requirements.

The third provision (at § 570.489(e)(2)(v)(C)) requiring that most interest earned by units of general local government on grant advances (prior to disbursement of the funds for activities) be returned to the U.S. Treasury, already appears in the State CDBG regulations at § 570.489(c)(2). Concordant with the proposed revision of § 570.489(c) (described above), this proposed rule would move the requirement to § 570.489(e)(2)(v) to complete the listing of what is not program income. This proposed rule would simultaneously update this provision to note that interest earned on escrow accounts, unlike interest earned on lump sum drawdowns, must be returned to the Treasury.

HUD issued comparable provisions in a final rule for the Entitlement CDBG program, published on November 9, 1995 (60 FR 56893). In responding to public comments in that rulemaking, HUD provided guidance on the extent and applicability of these provisions. Readers with a particular interest in these provisions may wish to read the preamble to the November 9, 1995 final rule (60 FR 56892).

(4) Program income generated by loans to subrecipients. This proposed rule would clarify, in § 570.489(e)(2)(iv), that units of general local government may receive program income from subrecipients, while eliminating any double-counting of program income received through that process. This proposed rule would classify such repayments as ''transfer[s] of program income.'' If the funds used by a subrecipient to make principal or interest payments on a CDBG loan it received from a unit of general local government consist solely of program income received by the subrecipient, no amount of those payments to the grantee represents ''new income'' to the grantee's CDBG program as a whole. If, however, the subrecipient uses non-CDBG funds to make the principal or interest payments, those payments to the local government are ''new income'' to the CDBG program; this proposed rule would not affect the treatment of such payments. HUD added a similar provision to the Entitlement program regulations in the November 9, 1995 final rule (60 FR 56893).

(5) Program income retained at the local level. Section 104(j) of the Act

allows a State to require that a unit of general local government pay the State any income to be used by the State to fund additional eligible community development activities, except that the State must waive this requirement to the extent that such income is applied to ''continue the activity from which such income is derived.''

HUD gives States the flexibility to define the phrase ''continue the activity from which such income is derived.'' HUD is aware of situations in which States found that a unit of local government failed to use program income in accordance with other program requirements, or was not making any efforts to expend its program income to continue the activity. HUD does not believe that Congress intended the above provision to override other programmatic requirements to the extent that a community must be allowed to retain the program income in egregious cases. This proposed rule, in § 570.489(e)(3)(ii)(A), would clarify that a State's definition of what constitutes ''continuing the activity from which such income is derived'' can include consideration of whether the program income is not being used (or is unlikely to be used) to continue the activity in a timely manner or in accordance with other program requirements.

In some situations, a State may determine that a unit of local government will use program income to continue the activity from which the income is derived, but that the amount of program income on hand exceeds projected cash needs for the near future. For example, community *Y* has a demand for about two housing rehabilitation loans per month, but has enough program income on hand to fund 10 average-sized loans. A State could require the unit of local government to return some or all the program income to the State's CDBG program income account until such time as it is needed by the local government. The State could disburse these funds to other units of general local government in the meantime rather than drawing funds from its line of credit.

When the local government needs its program income, the State could disburse the funds from the program account, or as necessary draw an equivalent amount from the State's line of credit for disbursal to the local government. This would increase the effective ''buying power'' of a State's CDBG funds, because the funds would be expended sooner. The reduced interest losses to the U.S. Treasury would be a potential side benefit, as States would need to draw funds from their line of credit somewhat less frequently. States would have the flexibility to define the time period over which cash needs for program income would be projected, and the appropriate level of program income that could be retained in the local government's own program account.

(6) State administrative costs. States may include program income in the base of funds against which they may deduct $100,000 plus up to 2 percent for State administrative costs. This is easily done for program income that is returned to the State, as those funds are already in the State's hands. States may find it more difficult to claim a portion of locally-held program income within their administrative costs allowance. Therefore, this proposed rule would provide, in § 570.489(e)(3)(ii), that a State could require a unit of general local government to return, for the State's use, up to 2 percent of program income retained at the local level.

Revolving Loan Funds

Revolving funds are typically established and administered in the following manner. A loan is made with CDBG funds (e.g., to a business to expand). Payments on that loan (i.e., principal, interest, or both) constitute program income that is credited as CDBG program income on the local government's books and held in an account independent of other program accounts. The program income in that account, including interest earned on the funds while on deposit pending their reuse, becomes the source of financing for additional loans of the same type. Hence, the term ''revolving fund'' has been used to describe such a fund. Revolving funds are used most frequently in connection with housing rehabilitation and economic development projects that involve loans.

A number of States have found regional revolving loan funds to be an efficient means of collecting and redistributing program income held at the local level. Such loan funds are often operated by a non-or quasi-governmental organization that administers programs as a subrecipient of the local government(s) to which HUD awarded grants. (Since these regional entities are usually not units of general local government, they may not directly receive CDBG funding.) Any program income they administer still belongs to the unit(s) of general local government whose grant(s) generated the program income. Successive reuses of program income must continue to be traceable back to individual localities' grants. This presents a problem if a regional loan fund is administering program income generated by multiple communities' grants.

Regional loan fund operators may wish to use program income to fund activities anywhere in their service area, regardless of which community the program income belongs to. However, while units of general local government may use CDBG funds for activities outside their jurisdictional boundaries, each such community must determine that it is meeting its community development needs by doing so. It may be difficult for community *A* to reasonably conclude that its citizens benefit by having its program income used for an activity in community *B*, 60 miles away.

Despite these problems, HUD supports efforts to establish regional loan funds. Economies of scale can often be achieved in the administration of such programs. Regional economic development efforts may be more cognizant of the regional nature of rural economies, and better positioned to act accordingly. Assessing the benefits of individual economic development projects may also make sense from a regional perspective, as employees of businesses in rural communities frequently commute from residences in other communities.

To provide flexibility, the present State CDBG regulations in § 570.489(f)(2) offer three options regarding revolving loan funds. First, States may make awards to combinations of governments. Under such an arrangement, program income can be reused within the jurisdiction of any of the participating local governments. Second, if both the activities and the regional entity that carries out the activities qualify under section 105(a)(15) of the Act, repayments generated from these activities are not within the definition of ''program income,'' and so are not subject to program requirements. Third, a State may itself operate a statewide revolving fund to redistribute to units of general local government program income returned to the State.

This proposed rule, in § 570.489(f)(2), would expand upon this third option by allowing a State to operate one or more revolving funds on a regional or statewide basis. Providing that the State determines that the program income will not be used to continue the same activity, a State can presently require program income generated from grant-funded activities to be returned to the State. With the proposed change, a State could, in essence, designate a regional revolving loan fund as a ''State'' revolving fund. A State could, pursuant to this proposal, require such program

income to be repaid to a State-designated regional revolving fund. The State could then contract with a regional entity to administer the fund (including the distribution of program income to local governments) on behalf of the State. Because the program income belongs to the State, the regional entity could, under the auspices of the State and its method of distribution, distribute it to any other eligible unit of local government covered by the regional revolving fund. The community whose initial grant generated the program income would have no further responsibility for the reuse of the program income. Subsequent repayments of program income would belong to the State, rather than belonging to a unit of local government, and the regional fund entity could award the funds, on behalf of the State, to units of general local government anywhere within the region. Any State choosing this approach would, of course, need to describe its process in the method of distribution contained in its consolidated plan.

Lump Sum Drawdowns

Section 104(h) of the Act allows units of local government to make lump sum drawdowns of CDBG funds to establish revolving loan funds for property rehabilitation activities. Paragraph (2) of that section requires HUD to establish standards governing lump sum drawdowns. Such standards exist in the CDBG Entitlement program regulations in § 570.513; however, HUD has never created comparable regulations for the State CDBG program. This proposed rule would amend § 570.513 so that its requirements could apply both to the Entitlement CDBG program and the State CDBG program; certain adaptations would be necessary to recognize the States' review and determination responsibilities, which HUD itself fulfills in the Entitlement program. With this proposed rule, HUD does not intend to make any substantive changes to the requirements of § 570.513 as they apply in the Entitlement program.

HUD reminds States that use of lump sum drawdowns is limited to the rehabilitation of privately-owned properties. This can include residential, commercial, and industrial properties; however, this would not include other forms of economic development assistance. Interest earned on lump sum drawdowns is classified as program income, and so is not subject to the return-of-interest provision in the existing § 570.489(c)(2) and the proposed § 570.489(e)(2)(v).

Use of Escrow Accounts for Rehabilitation

Similarly, § 570.511 allows Entitlement communities to establish escrow accounts for funding loans and grants for the rehabilitation of privately-owned residential property. Again, HUD has never created comparable regulations for the State CDBG Program. This proposed rule would amend § 570.511 so that its requirements could apply both to the Entitlement CDBG program and the State CDBG program, including appropriate adaptations respecting the role of States. With this proposed rule, HUD does not intend to make any substantive changes to the requirements of § 570.511 as they apply in the Entitlement program.

Paragraph (c) of § 570.511 of the Entitlement regulations concerns remedies for noncompliance. That paragraph gives HUD the authority to require a recipient to discontinue the use of escrow accounts. As adapted to apply to the State CDBG program in this proposed rule, the paragraph would indicate that States have authority under § 570.492(b) to discontinue a local government's use of escrow accounts if a State determines that a unit of general local government has failed to use an escrow account in accordance with § 570.511.

The escrow accounts provision is more limited in applicability than the lump sum drawdown provision; escrow accounts may be utilized only for the rehabilitation of primarily residential privately-owned properties. Furthermore, interest earned on grant funds placed in escrow accounts is not program income; it must be returned to the U.S. Treasury.

Conflict of Interest Provisions

HUD recently amended the conflict of interest provisions in the Entitlement program regulations (§ 570.611) in a final rule published on November 9, 1995 (60 FR 56893). The amendments to § 570.611 in the November 9, 1995 final rule were in response to public comments HUD received on the conflict of interest requirements during the course of the rulemaking.

The State CDBG conflict of interest provisions in § 570.489(h) date from a November 9, 1992 final rule (57 FR 53397). In today's proposed rule, HUD would make minor changes to these provisions to make them consistent with § 570.611 of the CDBG Entitlement regulations.

The introductory discussion of § 570.489(h)(2) describes the general principle concerning conflicts of interest as applicable ''[e]xcept for eligible administrative or personnel costs.'' HUD deleted this introduction from the Entitlement program regulations in the November 9, 1995 final rule, based on public comments that expressed confusion over the phrase. Several commenters described potentially troublesome situations that could arise from the inclusion of the phrase. HUD is not aware of any problems that have arisen in the State CDBG program as a result of the present wording. However, to promote consistency of regulatory approach between the two programs, this proposed rule would delete the reference to administrative or personnel costs from the regulations for the State program. HUD specifically requests comments from interested parties on what effect (if any) this deletion would have on the program. Commenters may wish to read the preamble to the November 9, 1995 final rule for further discussion of this issue (60 FR 56901).

This proposed rule would make several other wording changes in § 570.489(h)(2) concerning prohibited conflicts of interest. These changes would eliminate a redundant phrase, eliminate confusion over what sort of benefit a person might receive in a contract that would be nonfinancial in nature, and clarify that family ties of greatest concern are those with immediate family members.

Spending Funds Outside the Jurisdiction of the Recipient

This portion of the proposed rule would revise § 570.486(b). Under the existing regulations, CDBG-funded activities may serve beneficiaries living outside the jurisdiction of the unit of general local government if the unit of government determines that the activity is meeting its needs under the Act. Two emerging trends suggest that further regulation in this area is appropriate. In both situations, citizens may not be aware that funds that were supposed to benefit one community are being spent to benefit another.

First, States and units of general local government are increasingly using regional organizations to administer revolving loan funds on behalf of local governments. These regional entities, which may administer grants from multiple localities, often seek the flexibility to use program income generated from these grants anywhere within their service area, regardless of which community's grant generated the program income. This presents a problem. Local governments cannot completely abdicate to regional entities their responsibility to ensure that program income generated from their

grant is used to meet the community's needs.

Second, HUD is aware of a number of situations in which States awarded or planned to award a grant to one community, but the benefits of the activities would occur in a different community or throughout a much larger area. In some cases, one small community would receive a grant for an activity that would be carried out on a regional or even statewide basis. In other cases, suburban communities would receive funding for projects, and the principal benefit would accrue to a nearby Entitlement community. HUD does not believe it is appropriate for one community to serve as a ''flag of convenience'' grant recipient when only a small portion of the benefits will accrue to residents of that jurisdiction. In such situations, the more appropriate approach is for a State to make a grant to a ''combination of governments,'' as is specifically provided for in the Act. In situations involving activities located in Entitlement communities, HUD believes it is appropriate for Entitlement communities to participate in funding such projects commensurate with the benefits their citizens receive.

This proposed rule would add to the existing regulations a requirement that reasonable benefits must accrue to residents within the jurisdiction of the grant recipient. Since HUD is aware that activities located outside a State grant recipient's jurisdiction may indeed provide substantial benefits to the citizens within the jurisdiction, this proposed rule would not prohibit such activities. The rule would simply require that the State grant recipient consider whom the funds will benefit; in making a determination that such a project meets the community's needs, the community should ensure that the benefits to its residents are sufficient to justify the project. HUD would not question the determination (or the State's acceptance thereof) unless it is clearly unreasonable. This proposed rule would not limit the amount or percentage of funds that may assist such an activity, and should not affect joint efforts by cities and counties to benefit their residents. The recipient would be responsible for determining the reasonableness of the benefits in such cases. A parallel change was recently finalized in the CDBG Entitlement regulations, in the November 9, 1995 final rule (60 FR 56892).

State Authority to Impose Additional Provisions

This proposed rule would add a new provision to reinforce States' administrative flexibility. This new provision would authorize States to apply to participating units of general local government additional requirements or requirements that are more restrictive than those established by HUD. Such authority is implicit in the States' ability to administer the CDBG program, but HUD has never explicitly stated this in the regulations. States cannot impose any additional requirements that would be plainly inconsistent with the Act or with other statutory or regulatory provisions that apply to the State CDBG program. HUD proposes this provision in association with several of today's other proposed changes to portray more clearly State responsibilities and authority.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements in § 570.489(e)(4) of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Interested persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this proposed rule.

This document also provides the following information:

Title of Proposal: Revisions to State CDBG Program Income Requirements and Miscellaneous Amendments.

OMB Control Number: HUD is seeking OMB approval for the information collection requirements identified in this proposed rule. OMB will assign a control number for these State CDBG program information collection requirements upon granting approval. This proposed information collection would be in addition to the information collection requirements presently contained in the consolidated plan and covered under control number 2506–0117.

Description of the Need for the Information and Proposed Use: This rule proposes to revise the program income requirements governing the State CDBG program, along with miscellaneous other changes.

Form Numbers: Not applicable. No forms are required by HUD in the State CDBG program.

Members of Affected Public: States, units of general local government.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including Number of Respondents, Frequency of Response, and Hours of Response:

Changes in State CDBG requirements affect both State and local government staff. State staff review reports submitted by local governments, make on-site compliance reviews, and report to HUD on the uses of CDBG funds. Local government staff collect information to demonstrate compliance with program requirements and report to the State on the use of funds.

Two proposed changes in this rule would affect the amount of time spent by States and local governments in administering CDBG funds: locally-held program income subject to all CDBG requirements for as long as it exists; and States reporting on locally-held program income in their Consolidated Plan Reports. Several factors determine the burden that these proposed changes would impose on States and local governments. Housing rehabilitation and economic development activities are more likely to generate program income than are public facilities or public service activities. Activities that provide loans are more likely to generate program income than are activities providing grants or forgivable loans. The number, size, rate, and terms of loans made determine the amount of program income generated per year.

Some States require locally-retained program income to be used in compliance with some or all CDBG program income requirements, whether or not HUD's regulations require such compliance. In those States, the proposed rule will result in little or no additional local compliance burden. However, additional staff time will be needed by the States themselves to

report to HUD on the use of such program income.

The following figures represent additional increments of time and cost beyond those normally involved in the State CDBG program. In developing these estimates, HUD consulted with a representative sample of States; the figures represent a melding of HUD estimates with States' estimates to produce a national average.

All States together fund about 3,000 grants per year, consisting of about 11,000 activities. However, only about 20 percent of these activities are of types that are likely to generate income. As noted above, many of those income-generating activities are either not subject to program income requirements, or are already subject to program income requirements and will see no change under the proposed rule. Thus, HUD believes the number of State grants that will be subject to additional recordkeeping and reporting efforts is a relatively small portion of all State grants.

States make new grant awards to units of local government every year; however, States' grant contracts with units of general local government usually remain in force for several years. The burden estimates shown for local governments thus represent the net burden increase over the duration of its contractual relationship with the State, rather than annual figures. The burden estimates for States are average annual figures.

Burden of collection frequency	Number of respondents	Total hours per response	Total hours
Local recordkeeping and reporting to state on program income:			
Ongoing	550	60	33,000
State recordkeeping and reporting on program income:			
Annually	49	80	3,920
Total	599		36,920

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to the effecting of relatively minor procedural amendments that would update the State CDBG regulations to recognize statutory amendments and clarify the regulations to address past confusion.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism,* has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. The proposed rule is limited to making relatively minor procedural amendments that would update the State CDBG regulations to recognize statutory amendments and clarify the regulations to address past confusion. In general, this proposed rule would provide more flexibility and clarity in the regulations for States and units of general local government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, approved March 22, 1995; 109 Stat. 48) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector within the meaning of the UMRA. The provisions of this proposed rule would primarily clarify program procedures or provide States additional flexibility in administering block grant funds.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, for the reasons stated in the preamble, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.480 is amended by adding a new paragraph (e) to read as follows:

§ 570.480 General.

* * * * *

(e) A State may, in its administration of the program, apply additional or more restrictive provisions to units of general local government participating in the State's program, providing that such provisions are not plainly inconsistent with the Act or other statutory or regulatory provisions applicable to the State CDBG program.

3. Section 570.486 is amended by revising paragraph (b) to read as follows:

§ 570.486 Local government requirements.

* * * * *

(b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.* CDBG-funded activities may serve beneficiaries outside the jurisdiction of the unit of general local government that receives the grant, provided that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grant recipient, and provided that the unit of general local government determines that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act (42 U.S.C. 5306(d)(2)(D)).

4. Section 570.489 is amended by:

a. Revising paragraph (c);

b. Revising paragraph (e);

c. Revising the first sentence of paragraph (f)(2);

d. Revising paragraphs (h)(2) and (h)(3);

e. Adding a new paragraph (n); and

f. Adding a new paragraph (o); to read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(c) *Federal grant payments.* The State's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR part 205. The State must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the State to units of general local government. Units of general local government must also use procedures to minimize the time elapsing between the transfer of funds by the State and disbursement for CDBG activities.

* * * * *

(e) *Program income.* (1) For the purposes of this subpart, ''*program income*'' is defined as gross income received by a State, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property, owned by the unit of general local government or a subrecipient of a unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (e)(2)(iv) of this section;

(vi) Proceeds from the sale of loans made with CDBG funds, less legal and other costs associated with the sale of loans that are not otherwise eligible under sections 105(a)(13) or 106(d)(3)(A) of the Act (42 U.S.C. 5305(a)(13), 5306(d)(3)(A));

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds, less legal and other costs associated with the sale of obligations that are not otherwise eligible under sections 105(a)(13) or 106(d)(3)(A) of the Act (42 U.S.C. 5305(a)(13), 5306(d)(3)(A));

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending disposition of the income;

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(xi) Gross income paid to a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''*Program income*'' does not include the following:

(i) Any income received by a unit of general local government and its subrecipients during a twelve-month period, provided that the total of such income is less than $25,000. (This provision does not apply to funds paid to the State for redistribution to other units of local government.)

(ii) Amounts generated by activities that are eligible under section 105(a)(15) of the Act (42 U.S.C. 5305(a)(15)) and are carried out by an entity under the authority of section 105(a)(15) of the Act;

(iii) Amounts generated by activities that are financed by a loan guaranteed under section 108 of the Act (42 U.S.C. 5308) and meet one or more of the public benefit criteria specified in § 570.482(f)(3)(v), or are carried out in conjunction with a grant under section 108(q) of the Act (42 U.S.C. 5308(q)) in an area determined by HUD to meet the eligibility requirements for designation as an Empowerment Zone or Enterprise Community pursuant to either 24 CFR part 597, subpart B or 7 CFR part 25, subpart B (as applicable). Such exclusion does not apply if CDBG funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated must be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under section 108 of the Act (42 U.S.C. 5308) that are not defined as ''*program income*'' will be treated as miscellaneous revenue and will not be subject to any of the requirements of this part. However, such treatment does not affect the right of the Secretary to require the Section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts constitute program income is governed by the provisions of the contract required at § 570.705(b)(1).

(iv) Payments of principal and interest made by a subrecipient to a unit of general local government, toward a loan from the local government to the subrecipient, when program income received by the subrecipient is being

used for such payments. (By making such payments, the subrecipient is deemed to have transferred program income to the unit of general local government.)

(v) Interest earned on the following; such interest must be remitted to HUD for transmittal to the U.S. Treasury, and will not be reallocated under section 106 (c) or (d) of the Act (42 U.S.C. 5306 (c), (d)):

(A) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of §§ 570.482 or 570.483, or section 105(a) of the Act (42 U.S.C. 5305(a)), or that fail substantially to meet any other requirement of this subpart or the Act;

(B) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes; and

(C) Interest earned by units of general local government on grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to $100 per year for administrative expenses and may deduct service charges for escrow accounts pursuant to paragraph (o) of this section. (Interest earned on lump sum deposits pursuant to paragraph (n) of this section is not subject to the provisions of paragraph (e)(2)(v)(C) of this section.)

(3) (i) *Program income paid to the State.* Except as described in paragraph (e)(3)(ii)(A) of this section, the State may require the unit of general local government that receives or will receive program income to return the program income to the State. Program income that is paid to the State is treated as additional CDBG funds subject to the requirements of this subpart. Except for program income retained and used by the State for administrative costs under § 570.489(a), program income paid to the State must be distributed to units of general local government in accordance with the method of distribution in the action plan under 24 CFR part 91 that is in effect at the time the program income is distributed. To the maximum extent feasible, the State must distribute program income before it makes additional withdrawals from the Treasury, except as provided in paragraph (f) of this section.

(ii) *Program income retained by a unit of general local government.* The State may permit the unit of general local government that receives or will receive program income to retain the program income. In any case in which the State allows the unit of general local government to retain program income, the State may require the unit of local government to pay to the State an amount not to exceed 2 percent of the program income received, for use by the State in accordance with § 570.489(a).

(A) The State must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which it was derived.

(*1*) The State will determine when an activity will be considered to be continued. In making such a determination, the State may consider whether the unit of local government is or will be unable to comply with the requirements of paragraph (e)(3)(ii) of this section or other requirements of this part, and whether the program income-funded activity is unlikely to be completed within a reasonable time period.

(*2*) When the State determines that the program income will be used to continue the activity from which it was derived, but that the amount of program income held by the unit of local government exceeds projected cash needs for the near future, the State may require the local government to return all or part of the program income to the State's line of credit until such time as the program income is needed by the unit of general local government.

(B) Program income that is received and retained by the unit of general local government is treated as additional CDBG funds and is subject to all applicable requirements of this subpart for the duration of the program income's existence. The State has the option of selecting its approach for demonstrating compliance by units of local government with this paragraph (e)(ii)(B). The three approaches from which the State may select are:

(*1*) Maintaining contractual relationships with units of local government for the duration of the existence of the program income.

(*2*) Requiring advance State approval of either a State grant recipient's plan for the use of program income, or of each use of program income by grant recipients.

(*3*) With prior HUD approval, other approaches that demonstrate that the State will ensure compliance with the requirements of this subpart by units of local government.

(C) The provisions of paragraph (e)(3)(ii)(B) of this section apply to all activities funded with funds from fiscal year (FY) 1993 and later. All activities funded with FY 1992 and earlier funds are subject to § 570.489(e)(3)(ii) as it existed immediately before [**INSERT EFFECTIVE DATE OF FINAL RULE**]. At its option, a State may apply the provisions of paragraph (e)(3)(ii)(B) of this section to FY 1992 and earlier funds.

(D) The State must require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the State for activities, except as provided in paragraphs (f), (n), and (o) of this section.

(4) The State must report on the receipt and use of all program income (whether retained by units of local government or paid to the State) in its annual performance and evaluation report.

(f) * * *

(2) The State may establish one or more revolving funds to distribute funds to units of general local government throughout a State or a region of the State to carry out specific, identified activities. * * *

* * * * *

(h) * * *

(2) *Conflicts prohibited.* The general rule is that no persons described in paragraph (h)(3) of this section, who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or for those with whom they have immediate family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered.* The conflict of interest provisions in paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients that are receiving funds under this part.

* * * * *

(n) *Lump sum drawdowns.* The requirements for States and units of general local government regarding lump sum drawdowns to finance property rehabilitation activities are in § 570.513.

(o) *Use of escrow accounts for rehabilitation of privately owned residential property.* The requirements for States and units of general local

government regarding the use of escrow accounts for rehabilitation of privately owned residential property are in § 570.511.

5. Section 570.511 is revised to read as follows:

§ 570.511 Use of escrow accounts for rehabilitation of privately owned residential property.

(a) *Limitations.* A recipient may withdraw funds (or, as applicable, a State may allow units of general local government to withdraw funds) from its letter of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property. The following limitations apply to the use of escrow accounts for residential rehabilitation loans grants closed after September 7, 1990. (For the State CDBG program, the following limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after [**INSERT EFFECTIVE DATE OF FINAL RULE**]):

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale nonresidential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account must not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account. No deposit to the escrow account can be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(i) For the CDBG Entitlement program, the escrow account must be maintained by the recipient, by a subrecipient as defined in § 570.500(c), by a public agency designated under § 570.501(a), or by an agent under a procurement contract governed by the requirements of 24 CFR 85.36.

(ii) For the State CDBG program, the escrow account must be maintained by the unit of general local government, by an agent under a procurement contract governed by the requirements of § 570.489(g), or by a nonprofit entity authorized under section 105(a)(15) of the Act (42 U.S.C. 5305(a)(15)).

(3) All funds withdrawn under this section must be deposited into one interest earning account with a financial institution. Separate bank accounts may not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account must be limited to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days' cash needs, the recipient must immediately transfer (or, as applicable, the State must ensure that a unit of general local government immediately transfers) the excess funds to its program account. In the program account, the excess funds must be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6–2075.30.

(5) Funds deposited into an escrow account must be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the recipient's (or, as applicable, the unit of general local government's) administrative costs (as defined for the Entitlement CDBG program under § 570.206) or rehabilitation services costs under § 570.202(b)(9) if applicable, are not permissible uses of escrowed funds. Such other eligible rehabilitation costs must be paid under normal CDBG payment procedures (e.g., from withdrawals of grant funds under the recipient's (or State's, as applicable) letter of credit with the Treasury).

(b) *Interest.* Interest earned on escrow accounts established in accordance with this section, less any service charges for the account, must be remitted to HUD (for transmittal to the U.S. Treasury) at least quarterly but not more frequently than monthly. Interest earned on escrow accounts is not required to be remitted to HUD to the extent the interest is attributable to the investment of program income.

(c) *Remedies for noncompliance.* If HUD determines that a recipient has failed (or, as applicable, if a State determines that a unit of general local government has failed) to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the recipient to discontinue the use of escrow accounts, in whole or in part (or, as applicable, the State may, under the authority of § 570.492(b), require the unit of general local government to discontinue the use of escrow accounts, in whole or in part).

6. Section 570.513 is revised to read as follows:

§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subject to the conditions prescribed in this section (and section 104(h) of the Act (42 U.S.C. 5304(h), as applicable)), recipients may draw down funds (or, as applicable, States may allow units of general local government to draw down funds) from the letter of credit in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately owned properties. The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or such other uses as may be approved by HUD consistent with the objectives of this section. The fund may also be used for making grants, but only for the purpose of leveraging non-CDBG funds for the rehabilitation of the same property.

(a) *Limitation on drawdown of grant funds.* (1) The funds that a recipient deposits (or, as applicable, that a State allows a unit of general local government to deposit) to a rehabilitation fund must not exceed the grant amount that the recipient (or State, as applicable) reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement with the financial institution(s) (described in paragraph (b)(2) of this section), based on:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities; or

(iii) For purposes of the State CDBG program only, estimated demand for rehabilitation activity.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.

(3) The recipient's (or, as applicable, the unit of general local government's) rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income, other than program income generated by the lump sum deposit.

(b) *Standards to be met.* The following standards apply to all lump

sum drawdowns of CDBG funds for rehabilitation:

(1) *Eligible rehabilitation activities.* The rehabilitation fund must be used to finance the rehabilitation of privately owned properties (including the acquisition of properties for rehabilitation) eligible under the general policies in § 570.200, if applicable, and the specific provisions of either § 570.202 or § 570.203, if applicable; or, for purposes of the State CDBG program, as eligible under section 105 (a)(4), (a)(5), (a)(14), (a)(15) or (a)(17) of the Act (42 U.S.C. 5305(a)).

(2) *Requirements for agreement.* The recipient (or unit of general local government, as applicable) must execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement must specify the obligations and responsibilities of the parties, the terms and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Except for purposes of the State CDBG program, upon execution of the agreement, the recipient must provide a copy to the HUD field office for its records and use in monitoring; the recipient must also provide to HUD any modifications made during the term of the agreement. For purposes of the State CDBG program, a State may require State approval of any local agreement or modification.

(3) *Period to undertake activities.* The agreement must be fully executed before the lump sum deposit is made. Except for purposes of the State CDBG program, the agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. For purposes of the State CDBG program, States may set maximum time limits on the duration of lump sum drawdown agreements, but in no case can an agreement remain in effect after the date that a grant to a unit of general local government is closed out; the agreement must specify the time period for which the agreement is in effect.

(4) *Time limit on use of deposited funds.* (This paragraph (b)(4) of this section does not apply to the State CDBG program). Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are the guaranteed funds.) For a recipient with an agreement specifying two years to undertake activities, the disbursement of 25 percent of the fund (deposit plus any interest earned) within 180 days will be regarded as meeting this requirement. If a recipient with an agreement specifying two years to undertake activities determines that it has had substantial disbursement from the fund within the 180 days although it had not met this 25 percent threshold, the justification for the recipient's determination must be included in the program file. If a recipient does not start using the funds within 45 days, or substantial disbursement from such fund does not occur within 180 days, the recipient may be required by HUD to return all or part of the deposited funds to the recipient's letter of credit.

(5) *Program activity.* Recipients (or States, as applicable) must review the level of program activity under each agreement on a yearly basis. If activity is substantially below that anticipated, the recipient must return program funds to its letter of credit (or the State must require that the unit of general local government return program funds to the State's letter of credit, as applicable).

(6) *Termination of agreement.* (i) In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement under the Entitlement CDBG program, the recipient must terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.

(ii) For purposes of the State CDBG program, a State must develop and implement standards to ensure that, in cases of substantial failure by a private financial institution or a unit of general local government to comply with the terms of a lump sum drawdown agreement, all unobligated deposited funds will be withdrawn from the private financial institution and returned to the State's letter of credit.

(7) *Return of unused deposits.* At the end of the period specified in the agreement for undertaking activities, all unobligated deposited funds must be returned to the recipient's (or State's, as applicable) letter of credit unless the recipient (or unit of general local government, as applicable) enters into a new agreement conforming to the requirements of this section. In addition, the recipient (or State, as applicable) must reserve the right to withdraw any unobligated deposited funds as required by HUD (or, for purposes of the State CDBG program, as determined by HUD or the State) in the exercise of corrective or remedial actions authorized under §§ 570.910(b), 570.911, 570.912, or 570.913 (or, for purposes of the State CDBG program, under this section, §§ 570.492, 570.493, 570.495, or 570.496).

(8) *Rehabilitation loans made with non-CDBG funds.* If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds is not treated as program income.

(9) *Provision of consideration.* In consideration for the lump sum deposit by the recipient (or unit of general local government, as applicable) in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's (or, as applicable, unit of general local government's) rehabilitation program. Minimum requirements for such benefits are:

(i) Recipients (or units of general local government, as applicable) must require the financial institution to pay interest on the lump sum deposit.

(A) The interest rate paid by the financial institution cannot be lower than three points below the rate on one-year Treasury obligations at constant maturity.

(B) When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but the established rate cannot be lower than three points below the rate on one-year Treasury obligations at constant maturity.

(ii) In addition to the payment of interest, the financial institution must provide at least one of the following benefits:

(A) Leverage of the deposited funds so that the financial institution commits private funds for the loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for

rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, must be used for rehabilitation activities under the provisions of this section.

(d) *Outstanding findings.* Notwithstanding any other provision of this section, a recipient may not enter into a new agreement (or, as applicable, a State may not allow a unit of general local government to enter into a new agreement) during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(e) *Prior notification.* (This paragraph (e) of this section does not apply to the State CDBG program.) The recipient must submit written notification to the HUD field office of the amount of funds to be deposited with a private financial institution, before making the deposit under the provisions of this section.

(f) *Recordkeeping requirements.* (This paragraph (f) of this section does not apply to the State CDBG program.) The recipient must maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

Dated: March 5, 1997.

Howard Glaser,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–6024 Filed 3–10–97; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
March 11, 1997

Part VI

Department of Transportation

Coast Guard

46 CFR Part 10

Radar-Observer Endorsement for Operators of Uninspected Towing Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

[CGD 94–041]

RIN 2115–AE92

Radar-Observer Endorsement for Operators of Uninspected Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its rules to require a Radar-Observer endorsement. This final rule requires radar-training for licensed masters, mates, and operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length, toward the endorsement. The rule is necessary to ensure that radar-equipped towing vessels are manned by mariners with the qualifications, skills, and knowledge to operate the radar equipment on board.

DATES: This final rule is effective on March 11, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Donald J. Darcy, Project Manager, Division of Maritime Personnel Qualifications (G–MSO–1), telephone (202) 267–0221, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 4, 1994, a public hearing was held concerning this rulemaking. On October 26, 1994, the Coast Guard published an interim rule in the Federal Register (59 FR 53754) that required training and an endorsement for personnel receiving original licenses, or renewing or upgrading licenses, on or after February 15, 1995. In response to comments from members of the regulated public indicating difficulties in obtaining the required training in the time allowed, on February 14, 1995, the Coast Guard published a second document in the Federal Register (60 FR 8308) which reopened the comment period and postponed the compliance date to June 1, 1995. No public hearing was requested, and none was held. Public comments submitted, as well as further evaluation of the interim rule by the Coast Guard, revealed issues requiring additional clarification. Therefore, on May 3, 1996, the Coast Guard published a third document in the Federal Register (61 FR 19859) which reopened the comment period for the second time and invited comments on specific items. This time the comment period closed on July 2, 1996; but the compliance date of the interim rule remained June 1, 1995.

Background and Purpose

The derailment of the Amtrak Sunset Limited, a passenger train, on September 22, 1993, with extensive injury and loss of life, resulted in a study entitled ''Review of Marine Safety Issues Related to Uninspected Towing Vessels''. The study cited a number of recommendations for improving safety in the towing industry. One of the recommendations was to require Radar-Observer training and endorsements for operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length. That recommendation was approved by the Coast Guard, which, on October 26, 1994 (59 FR 53754), published an interim rule establishing requirements for radar training. The interim rule constituted part of a comprehensive initiative by the Coast Guard to improve navigational safety for towing vessels. It also added topics to the list of subjects taught in approved radar-training courses that must be completed for a Radar-Observer endorsement. It first became effective on November 25, 1994. However, to provide a reasonable opportunity for affected persons to complete the training and obtain the required endorsements, 46 CFR 15.815(c) requires the endorsements only for those licenses issued on and after June 1, 1995. (It compelled persons holding valid licenses issued before June 1, 1995, to undergo basic Radar-Operation training, and to obtain certificates of completion for that training before June 1, 1995.) Without an endorsement (or a certificate of completion), no person may serve after June 1, 1995, as a master, mate, or operator of a radar-equipped towing vessel, 8 meters (approximately 26 feet) or more in length. The comment period for the interim rule, as twice extended, closed on July 2, 1996.

This final rule, like the interim rule, applies to all operators of radar-equipped towing vessels 8 meters (approximately 26 feet) or more in length operating in the navigable waters of the United States, except for towing vessels engaged solely in assistance towing.

The changes to § 15.815 accomplished by the interim rule went into effect on June 1, 1995, and have already been published in the Code of Federal Regulations. They therefore need not be restated in this final rule, and are not; but this rule adopts them as final.

Discussion of Comments and Changes

The Coast Guard embarked on this rulemaking to establish a baseline of documented training and competency in the towing industry. It has carefully considered the expense and inconvenience this rule places on industry and mariners, and has determined that this training is necessary to ensure that vessels equipped with radar are manned by mariners with the skills and knowledge to use and interpret radar data.

At the close of the comment period, on July 2, 1996, the Coast Guard had received comments from 780 interested parties regarding this rulemaking.

Among the comments were 595 form letters expressing concern that under this rulemaking some Operators of Uninspected Towing Vessels (OUTVs) would have to obtain training on radar equipment that was not required on towing vessels. Section 15.815(c), as amended in the interim rule (CGD 94–041 [60 FR 8309], February 14, 1995), requires operators of towing vessels of 8 meters (approximately 26 feet) or more in length, if equipped with radar, to meet the Radar-Operation and Radar-Observer requirements. The CG notes that under a separate rulemaking, published on July 3, 1996, (CGD 94–020 [61 FR 35064]), towing vessels of 12 meters (approximately 39 feet) or more in length are required to be equipped with radar. Therefore, operators of towing vessels of 12 meters (approximately 39 feet) or more in length are required to meet the Radar-Operation and Radar-Observer requirements because those vessels are required to be fitted with radar. However, operators of towing vessels of 8 to 12 meters in length, are required to meet the Radar-Operation and Radar-Observer requirements only if the vessel is fitted with radar.

Also among the comments were 160 letters that expressed concern that mariners who already have extensive experience operating towing vessels on oceans in domestic trade, using navigational equipment, would nonetheless have to attend training under the treaty known as STCW (for Standards of Training, Certification and

Watchkeeping for Seafarers). The Coast Guard has developed this rulemaking to work in harmony with international law and, where possible, eliminates requirements that create unwarranted differences between domestic and international law in general.

Another 12 comments discussed radar as merely a navigational aid, not to be depended on entirely. The Coast Guard concurs with these comments. But, like any navigational aid (tool) used by mariners to navigate their vessels, radar—while it must not be depended on entirely— must be used correctly, or it becomes a detriment to safe navigation.

Another 11 comments questioned the necessity for the 5-day radar-operator course, and for the refresher course, for operators of assistance-towing vessels. In addition, one comment complained that the rule is written so broadly as to include the marine-assistance industry, since the industry falls under the rules that affect uninspected towing vessels; it stated that there is a need to differentiate between vessels providing assistance and those that provide commercial towing services, and it urged the Coast Guard to exempt all marine-assistance vessels from the final rule. The Coast Guard has considered these comments and appreciates the outstanding safety record the assistance-towing industry has enjoyed, and continues to exclude towing vessels operated exclusively for this industry from this final rule. Should an operator choose to engage in simple towing (where there is no peril to the vessel being towed), this rule, as well as rules governing equipment and licensing, will become applicable. The assistance-towing endorsement already is applicable to all licenses except those for OUTVs and for master or mate authorizing service on inspected vessels over 200 gross tons. Holders of these licenses may engage in assistance towing without endorsement on any vessel within the scope of the license.

Several comments expressed concern for the economic impact on small entities and on individual mariners. The greatest expense will be to obtain an original radar endorsement, which normally requires a training course of 3 to 5 days; however, for some mariners, this rule may not require this until the year 2000. After mariners have obtained the original endorsement, they need only a 4-hour course for the subsequent license renewal. Since the renewal and the endorsement are each valid for 5 years, their cost is prorated over 5 years. Neither in any one year nor in all 5 years is the cost out of line, weighed against the enhanced safety due to the training. (Please refer to the full treatment of the impact on *Small Entities* elsewhere in this preamble.)

Several comments cited the training as inconvenient, since it will take away valuable family time that is already limited simply by the nature of the job. Others cited the financial expense to the family, because mariners may lose pay during the training period and may incur additional costs for travel, food, and other necessities. The Coast Guard notes that, when a mariner enrolls in the 5-day training course to obtain the original radar endorsement, the training amounts to 1 day a year. Furthermore, the Coast Guard notes that, for the 4-hour refresher course in preparation for the license renewal, the training amounts to less than 1 hour a year.

Another 48 comments requested an extension of the compliance date for the Radar-Observer endorsement. In response to these and other comments from members of the regulated public, the Coast Guard amended the interim rule to change the date on which the Radar-Observer endorsement or the Radar-Operation certificate would become effective, from February 15, 1995, to June 1, 1995.

One comment stated that simulator training should not be a predicate of designation as a radar observer. The Coast Guard has considered this comment and has determined that simulator training will remain a part of this rulemaking since a simulator presents several scenarios in a controlled environment, in a shorter time; this allows for a demonstration of proficiency using radar equipment much earlier than usual.

One comment stated that the training requirement imposed by this rulemaking is unnecessary because use of radar is necessary in the execution of the job and because, therefore, many mariners have had years of experience as radar observers—with great success, as evidenced by the outstanding safety record of the industry. The comment requested that this experience equate to training. The Coast Guard agrees that experience is certainly an asset, but has determined that it is not a replacement for training, and notes that the success claimed for the assistance-towing industry is not supported by statistics for the entire commercial-towing industry: statistics indicate that this training is necessary for the commercial-towing industry.

Still other comments suggested that a Coast Guard representative visit vessels and view their operations and then determine whether they meet the intent of the rule. As mentioned earlier, the Coast Guard has determined that use of a simulator is the best and most economical method for testing proficiency, since it presents several scenarios in a safe and controlled environment, in a shorter time, and requires a demonstration of radar skills.

Eleven comments suggested that Radar-Observer training be a requirement only for newly licensed operators, since, having had no previous experience, they will probably benefit most from it. The Coast Guard agrees that newly licensed operators may benefit most from this training, yet is of the opinion that this training will sharpen the skills of all operators of towing vessels except for towing vessels engaged solely in assistance-towing.

Two comments suggested that the Coast Guard allow qualified companies to conduct required training and certification on board their towing vessels. This final rule does allow qualified companies (i.e., those with Coast Guard-approved courses) to conduct training. (As stated in the interim rule, only the Radar-Operation course may be conducted by individuals, companies, or other organizations without prior Coast Guard approval.)

Several comments suggested that persons who already hold valid licenses and have successfully completed all requirements towards the Radar-Observer endorsement be allowed to extend the renewal date of the endorsement to coincide with the month of the renewal date of the license, reducing time and expense. The Coast Guard has accepted this suggestion [46 CFR 10.480(k)] and will allow synchronization of the renewal dates of the endorsement and the license. It has determined that adopting this suggestion will not pose a safety risk and will reduce economic and administrative burdens on the mariners and the Coast Guard. (Completion of the Radar-Observer training still has to precede the renewal of the license by 2 years or less, and extending the validity of the endorsement is necessary only once to synchronize the renewals.

One comment suggested that the Coast Guard give serious consideration to a radar requirement for uninspected charter vessels equipped with radar, since a high percentage of operators of these vessels do not know how to perform the basic collision-avoidance and blind-navigation techniques greatly needed in restricted visibility, which is common whether in the Northeast or on the West Coast. The Coast Guard has considered this suggestion and has determined that, while this comment has considerable merit, it lies outside the scope of this rulemaking.

One comment questioned whether an OUTV towing a passenger-barge should have to attend training for proficiency in rapid radar plotting when this training offers no practical utility for any operator of typical inland or coastwise vessels, very few of which are equipped with large radars and plotting boards. The Coast Guard has considered this comment and has determined that operation of a passenger-barge entails both a passenger-vessel license and a towing endorsement, since the barge both carries passengers on board and is being towed.

Three comments suggested that the Coast Guard develop a set of rules for river radar distinct from the set for blue-water radar. The interim rule, the relevant parts of which this final rule adopts as final, has separate requirements [46 CFR 10.305(b)(3) and (6)] for unlimited, inland and Gulf Intracoastal Waterway (GIWW), and river routes.

Another comment suggested that the Coast Guard require towing vessels over a certain tonnage (or horsepower) to be equipped with radar and for operators to hold certificates of training in the operation of that radar. The Coast Guard has already issued a final rule requiring radar on towing vessels of 12 meters (about 39 feet) or more in length [61 FR 35064 (July 3, 1996)].

Five comments suggested that this rule apply only to vessels above a threshold of 12 meters (about 39 feet) or more in length, rather than to those above 8 meters (about 26 feet) or more in length. The rule on equipment, cited in the previous paragraph, does apply to the higher threshold vessel 12 meters (about 39 feet) or more in length. But the Coast Guard maintains that, if radar is installed on board, the operator must possess the skills and knowledge to use and interpret the data for the radar to be of any value as a navigational aid.

Two comments stated that this rule could deter mariners with navigational skills from wanting to promote themselves into the pilot house because of the added cost, time, and fear of failing the test. These concerns may affect mariners' ability to continue earning a living, since failing the test would cost them their jobs if their employers did not have some other kind of job available. The intent of this rule is not to deter mariners with navigational skills from advancing into the pilot house; rather, it is to ensure before they navigate a vessel they possess these skills and knowledge to interpret the data, and not just that they accrue deck time. While, in the past, holding a licensed position in the pilot house did not require training, and may have reduced worries of unemployment for the mariner, this training however provides assurance to the public that vessels are under the command of qualified personnel. The Coast Guard holds that the benefits far outweigh the discernible costs, and that the rule as a whole provides the entire towing industry some assurance of checks and balances on both domestic and international waterways.

One comment suggested that the Coast Guard print a manual on radar operation and, upon renewal of a license, require the taking of a test based on the information addressed in the manual. The studies and reports used to formulate this rulemaking emphasize demonstrating skill as well as knowledge of radar equipment, rather than relying solely on a mariner's ability to pass a test. Therefore, the Coast Guard favors practical demonstration as well as testing, to determine a mariners' proficiency in radar operation.

One comment stated that the rule was confusing and required interpretation and even translation. The Coast Guard realizes the difficulty for some mariners in understanding many sections of this rule and has changed it where clarity was in question [§§ 10.305(c)(1)(ii)(C), (1)(iii)(A), and (3)(iii)(E)].

Several comments addressed §§ 10.305(c) (2)(iii) and (3)(iii), which require licensed personnel to know, and to show that they know, how to plot course, speed, and closest point of approach on inland waters and on rivers. Many comments noted that course plotting is seldom performed on inland waters or on rivers, because of the time and attention required to plot the course. Several comments explained that, by the time the course was plotted, the vessel would have passed the boat or bridge by reason of which it was plotting. Another comment noted that plotting by radar is impossible on most rivers because the other vessel is usually obscured from radar view until the last moment. Likewise, requiring the captain to make intricate calculations and navigate the vessel at the same time iswill be dangerous because of continuous course changes at short intervals: dangerous to the observer, the crew, and other vessels in the area. The Coast Guard would certainly rather have an operator making passing arrangements on the radio and looking out the pilot-house windows than staring into a radar set—under normal visibility. Under reduced visibility, however, a mariner must use all the navigational aids available including radar. Therefore, on rivers the rule will instead require [46 CFR 10.305(c) (2)(iii) and (3)(iii)] the operator to be trained in interpreting, and to demonstrate how to interpret, the relative course, speed, and approximate location of another vessel, which may be crossing, meeting, or overtaking.

One comment stated that the industry needs to raise its standards and be more pro-active with any training that will help masters, mates, and other watchstanders in the performance of their duties. The Coast Guard concurs with this comment.

Four comments recommended that, to avoid confusion, the ''Rivers'' endorsement be expanded to include the GIWW. The Coast Guard has considered this and similar recommendations from the Towing Safety Advisory Committee (TSAC), and has determined that this is not appropriate, since a Rivers endorsement requires a different level of knowledge and skill. Operation of a vessel on rivers is less subject to weather than that of a vessel on the GIWW. However, to avoid confusion the Coast Guard has done something else instead: It has expanded the inland endorsement to include the GIWW since the required level of knowledge and skill for inland and the GIWW are compatible, as they involve similar operational conditions. Accordingly, in this rulemaking, the endorsement for inland waters is renamed, ''inland waters and GIWW'' [46 CFR 10.305, 10.306, and 10.480].

One comment suggested that the Coast Guard consider allowing currently licensed towboat operators who have earned certificates from Radar-Operation courses to qualify as applicants for original endorsements. The Coast Guard has determined that licensed towboat operators who have earned only certificates from Radar-Operation courses have not attained enough expertise to qualify their holders for original endorsements. The Coast Guard is increasing the OUTVs' expertise with radar in three stages. First, as of June 1, 1995, every operator of an uninspected towing vessel equipped with radar, whose license was issued before June 1, 1995, had to hold a certificate from a Radar-Operation course; this represents as little as 4 hours' instruction. Second, upon renewal of a license as an OUTV on or after June 1, 1995, every operator has had to hold a certificate from a Radar-Observer course; this represents as much as 5 days' training (the precise amount varies with training facilities chosen and route-endorsements sought). Third, thereafter, upon renewal of the endorsement—which should by then coincide with that of the license—every such operator will have to hold a

renewal certificate; this will represent 4 more hours' instruction.

One comment proposed that the Coast Guard consider allowing applicants for renewal of the Radar-Observer endorsement the option to ''test out'' of the refresher-training course by passing the final examination instead of taking the course. A similar comment questioned why a renewal or upgrade was necessary every 5 years, and argued that later training would serve only to deplete the income of mariners. The Coast Guard has considered these comments and has determined, however, that leniency would undermine the intent of establishing and maintaining proficiency, and would not provide the mariners any assurance of their fellows' competence on domestic or international waters.

One comment suggested that the Coast Guard require all candidates for first licenses to attend the 5-day Radar-Observer course, which leads to the Radar-Observer endorsement. The Coast Guard has considered this comment and has already made this a requirement, in § 15.815(c).

One comment proposed that, every 30 months, a licensed mariner certified by the Coast Guard assess the skills of each operator, while on board the vessel, and according to the findings endorse the operator's license, certifying proficiency in the interpretation of radar data—or not. The Coast Guard has considered this proposal, but notes that it could be cost-prohibitive to assess the operators' skills in this manner because the time spent on board the vessel assessing the operator's skills, through a series of exercises, is unpredictable. However, this rule [46 CFR 10.480(e)] allows administration by the Coast Guard or a third party of an exam for renewal of Radar-Observer endorsement.

One comment suggested that the Coast Guard allow companies to submit a list of personnel competent to be certified by the Coast Guard as radar observers. The Coast Guard finds this unacceptable because it leaves too much room for interpretation of competency, and may lead to its rubber-stamping of personnel.

One comment disputed the Coast Guard's view that training institutions would be able to train the requisite number of mariners in the existing Radar-Operation course, and gear up to teach the new Radar-Observer course, both by February 15, 1995. This request is now moot—first because the Coast Guard extended the compliance date to June 1, 1995, and second because, as later events have proved, the schools have been meeting the double challenge.

One comment questioned why the Coast Guard has chosen to place the burden of obtaining Radar-Operation training squarely on the shoulders of the operators rather than on their employers. This training may be a condition of employment: Failure to obtain the required training may leave a mariner unqualified and, therefore, unemployable as an operator of a radar-equipped towing vessel.

One comment questioned why the Coast Guard has never required any evidence of training other than in first aid and CPR before licensing an OUTV. A notice of proposed rulemaking [61 FR 31332] in CGD 94–055, ''Licensing and Manning for Officers of Towing Vessels'', whose comment period stayed open until October 17, 1996, fully addresses this question. A supplemental notice in CGD 94–055, also with a comment period, is being developed as described in an earlier notice of intent, published at 61 FR 66642.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is non-significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) [44 FR 11040; February 26, 1979].

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the Regulatory Policies and Procedures of DOT is unnecessary.

This rule will apply to licensed operators of radar-equipped towing vessels operating in U.S. waters. As of August 1996, there were an estimated 12,300 licensed operators of uninspected towing vessels (OUTVs) in the U.S. An estimated 473 new OUTV licenses are issued annually, and 1,931 OUTV licenses are renewed annually. Although some OUTVs may operate towing vessels on oceans (domestic-trade waters), licensed masters and mates crew many of these vessels. Now OUTVs on oceans have to complete a one-time Radar-Observer course [see 46 CFR 10.464(e)(2)]. This rule will require certain licensed OUTVs to obtain Radar-Observer endorsements, which must be renewed 5 years after the month of issuance [see § 10.480(f) in this regulatory text]. Roughly 15,000 masters, mates, active OUTVs, and new OUTVs will each need to complete a Radar-Observer course sometime during the next 5 years to comply with 46 CFR 15.815(c). Those completing the Radar-Observer course will need to renew their endorsements every 5 years to continue to work on radar-equipped towing vessels. Certificates from Radar-Operation courses will not be valid with licenses dated after June 1, 1995; Radar-Observer endorsements will be necessary with such licenses. Persons using Radar-Operation certificates to satisfy § 15.815(c) will need to complete the Radar-Observer course when they renew or upgrade their licenses if they intend to continue working on radar-equipped towing vessels.

Comments on Costs

Several comments to the interim rule suggested that the estimated cost to comply with the initial requirements was understated. These comments estimated that the actual cost to receive the initial endorsement would amount to between $1,000 and $2,000 per operator. One comment estimated that the cost to receive the radar endorsement would be $2,500 because there are no courses approved by the Coast Guard in Pennsylvania. (The Coast Guard has determined that there are indeed no such courses and that therefore an operator would need to travel to a nearby State to enroll in a course.) All of the comments on costs have influenced the following, revised calculations.

Benefits

This rule is the direct result of the recommendations from the ''Railroad—Marine Accident Report'' prepared by the National Transportation Safety Board (NTSB). The Report noted a lack of competence in radar navigation and cited this lack of competence as the probable cause of the derailment of theat Amtrak Sunset Limited. The Report recommended that the Coast Guard upgrade its licensing standards to require that persons licensed as OUTVs hold valid inland-waters Radar-Observer certification if they stand navigational watch on radar-equipped towing vessels. It also recommended that the Coast Guard require employers to provide specific evidence of approved training. The Coast Guard affirmed, in ''Review of Marine Safety Issues Related to Uninspected Towing Vessels'', that 60 percent of all towing-vessel casualties are due to human error. The ''Review'', therefore, supports this rulemaking.

This final rule addresses the findings of the NTSB, which cited a lack of training for operators and a failure of employer accountability as two key issues identified in past major marine accidents—particularly in that of the

derailment of the Amtrak Sunset Limited caused by the Tug MAUVILLA that resulted in 47 deaths and 103 injuries. The number of persons at risk in a major marine casualty typically ranges from about 25 to 2,000 or more. The training required by this rule has the potential to significantly decrease the number of deaths and injuries in the marine industry. If this training decreases the number of deaths even by just 7 people over the next 13 years, the benefit of $18.9 million, which is based on the willingness by society to pay $2.7 million for the value of a fatality averted, will exceed the estimated cost of $17.1 million.

One way to reduce the risks associated with human error in operating a towing vessel is to ensure that mariners maintain the highest practicable standards of training, certification, and competency. Although this rule may increase costs to industry, through upgraded training and certification, the new requirements are intended to increase potential benefits by reducing towing-vessel accidents and, with them, deaths and injuries.

Costs

The costs, which accrue from the date of this final rule, depend on the types of courses taken, the average fees for the courses, and the expenses for travel, meals, and lodging (where applicable). The following are general premises: (1) Although the interim rule went into effect on June 1, 1995, costs are calculated from the effective date of this final rule; (2) the average course length is 5 days, whether for an unlimited license, for a license for inland waters and GIWW, or for a license for rivers, and is long enough to meet the new requirements for those operators who will be taking the Radar-Observer course for the very first time; (3) courses are conveniently offered near most port cities, so extensive travel will be necessary for few operators; (4) operators usually work on a rotational schedule, allowing them to arrange for enrollment in a course without interfering with their normal work schedule; (5) 30 percent of those affected by this rule will incur additional miscellaneous expenses involving travel and lodging while the remaining 70 percent will incur minimal expenses, given the convenience of course locations; (6) the typical towboat operator started his career in 1983, has served 12 years, and will serve for 18 more years, a total of 30 years; and (7) recurring costs for renewals run from year 2000 through year 2013, the last year of those 30, while recurring costs for new OUTVs run from year 1995.

The Radar-Observer courses and corresponding endorsements vary depending on route: unlimited, inland and GIWW, and rivers. The Coast Guard sampled various institutions that offer these courses and found that course lengths varied depending on route, from 3 to 8 days. The Coast Guard used a length of 5 days for this rule.

The costs to obtain the original Radar-Observer endorsement and to renew it every 5 years are as follows:

Original Radar-Observer Course

Average Cost	$480
Meals and Lodgings	500
Travel	
Local	50
Distant	350
Total Cost (with distant travel)	1,330
Total Cost (with local travel)	530

Renewal Course (4 hours, including exam)

Average Cost	$125
Meals and Lodgings	100
Travel	
Local	50
Distant	350
Total Cost (with distant travel)	575
Total Cost (with local travel)	175

An optional refresher course is available to operators who need to review advances or changes in radar technology. The average cost of this course is $260; however, as previously stated, this course is not a requirement to renew an OUTV Radar-Observer endorsement.

The following calculations rest on the seven general premises established previously and on information obtained from suppliers of courses, meals and lodging, and travel:

Original Radar-Observer Course

1. Affected OUTVs already serving (12,300) × Cost (5-day Course):	
8,610 (with local travel) × $530	$4,563,300
3,690 (with distant travel) × $1,330	4,907,000
Total	9,471,000
New OUTVs issued annually (473) × Cost (5-day Course)	
331 OUTVs (with local travel) × $530	$175,430
142 OUTVs (with distant travel) × $1,330	188,860
Total	364,290

Renewal Course

OUTVs renewed annually (1,931) × Cost (4-Hour Exam):	
1,352 renewals (with local travel) × $175	$236,600
579 renewals (with distant travel) × $575	332,925
Total	$569,525

The principal costs began to accrue over the 5 years from June 1, 1995, when OUTVs began renewing their licenses and receiving their first radar endorsement. The cost that current OUTVs will incur to receive the initial Radar-Observer endorsement comes to around $9,471,000 in all, or $1,894,200 annually. The cost that new OUTVs will incur, shown as a recurring cost, comes to around $364,290 annually until year 2000. After then, recurring costs, which comprise 5-year renewals and new OUTVs altogether, come to around $933,815 ($364,290 + $569,525) annually. Costs of this rule are calculated to years 2013 and 2025 to reflect 30 years of service performed by OUTVs who started their terms in 1983 and 1995, respectively. The total costs to year 2013 are estimated to be $17,093,615. Costs to industry over 30 years are estimated to be $30,120,845. The present values of the recurring costs to years 2013 and 2025 are $17,093,615 and $30,120,845, respectively. This reflects a 7-percent discount to 1997 of the projected stream of costs of this rule in accordance with current guidance from the Office of Management and Budget.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field; (2) governmental jurisdictions with populations of less than 50,000; and (3) ''small-business concern[s]'' as defined by section 3 of the Small Business Act [15 U.S.C. 632(a)]. Pursuant to 15 U.S.C. 632(a) the standard industrial classification-codes and size-standards are set forth in the table following 13 CFR 121.601.

This rule places its burden on individual OUTVs, not on their employers, who may, though they need not, relieve the OUTVs of it. The Coast Guard expects that, of the employers who will assume this responsibility, few if any will be small entities. Additionally, sufficient flexibility and alternatives were built into this rulemaking, when the interim rule was initially published on October 26, 1994, to accommodate small entities; these included a phase-in period of up to 5

years, during which a Radar-Operation certificate would be accepted, and the exemption for operators of assistance-towing vessels. The effective date of June 1, 1995, provided enough notice to OUTVs that those whose licenses expired after June 1, 1995, could renew them in advance; in effect, OUTVs could extend the renewal date and meet the new requirements by distributing the initial cost over 2 to 5 years.

Therefore, the Coast Guard certifies under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule is a matter of training, qualifying, licensing, and disciplining of maritime personnel within the meaning of subparagraph 2.B.2.e(34)(c) of Commandant Instruction M16475.1B that clearly has no environmental impact. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 10 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

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

Authority: 31 U.S.C. 9701, 46 U.S.C. 2101, 2103, 7101, 7106, 7107; 49 CFR 1.45, 1.46; section 10.107 is also issued under the authority of 44 U.S.C. 3507.

2. Section 10.305 is revised to read as follows:

§ 10.305 Radar-Observer certificates and qualifying courses.

(a) A student who takes an approved course of training, which includes passing both a radar-theory examination and a practical demonstration on a simulator, and who meets the requirements of this section is entitled to an appropriate Radar-Observer certificate—

(1) In a form prescribed by the school and acceptable to the Coast Guard; and

(2) Signed by the head of the school.

(b) The following Radar-Observer certificates are issued under this section:

(1) Radar Observer (Unlimited).

(2) Radar Observer (Inland Waters and Gulf-Intracoastal Waterway [GIWW]).

(3) Radar Observer (Rivers).

(4) Radar Observer (Unlimited: Renewal).

(5) Radar Observer (Inland Waters and GIWW: Renewal).

(6) Radar Observer (Rivers: Renewal).

(c) A school with an approved Radar-Observer course may issue a certificate listed in paragraph (b) of this section after the student has successfully completed the appropriate curriculum as follows:

(1) Radar Observer (Unlimited). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Purposes and functions of the main components that constitute a typical marine-radar system.

(ii) Operation and use of radar:

(A) Purpose and adjustment of controls.

(B) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) Effects of sea return, weather, and other environmental conditions.

(D) Limitations of radar resulting from design factors.

(E) Safety precautions associated with use and maintenance of marine radar.

(F) Measurement of ranges and bearings.

(G) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Radar navigation (including visual techniques)—determining positions, and detecting changes in the relative motion, of other vessels.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Determining the course and speed of another vessel.

(D) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(E) Detecting changes of course or speed of another vessel after its initial course and speed have been established.

(F) Applying the Navigational Rules, Chapters 30 and 34 of Title 33 U.S. Code [Commandant Instruction M16672.2C, as amended, or equivalent], and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(G) Use of radar in maintaining situational awareness.

(iv) Plotting (by any graphically-correct method):

(A) Principles and methods of plotting relative and true motion.

(B) Practical-plotting problems.

(2) Radar Observer (Inland Waters and GIWW). Classroom instruction—with emphasis on situations and problems encountered on inland waters and the GIWW, including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Purpose and functions of the main components that constitute a typical marine-radar system.

(ii) Operation and use of radar:

(A) Purpose and adjustment of controls.

(B) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) Effects of sea return, weather, and other environmental conditions.

(D) Limitations of radar resulting from design factors.

(E) Safety precautions associated with use and maintenance of marine radar.

(F) Measurement of ranges and bearings.

(G) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Radar navigation (including visual techniques)—determining positions, and detecting changes in the relative motion, of other vessels.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Determining the course and speed of another vessel.

(D) Determining the time and distance of closest point of approach of a

crossing, meeting, overtaking, or overtaken vessel.

(E) Detecting changes of course or speed of another vessel after its initial course and speed have been established.

(F) Applying the Navigational Rules, and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(G) Use of radar in maintaining situational awareness.

(3) Radar Observer (Rivers). Classroom instruction—with emphasis on situations and problems encountered on rivers, including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Purpose and functions of the main components that constitute a typical marine-radar system.

(ii) Operation and use of radar:

(A) Purpose and adjustment of controls.

(B) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) Effects of sea return, weather, and other environmental conditions.

(D) Limitations of radar resulting from design factors.

(E) Safety precautions associated with use and maintenance of marine radar.

(F) Measurement of ranges and bearings, recognizing limited use of radar bearings in curving, narrow channels.

(G) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Radar navigation (including visual techniques)— determining positions, and detecting changes in the relative motion, of other vessels.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Applying the Navigational Rules, and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(D) Use of radar in maintaining situational awareness.

(4) Radar Observer (Unlimited: Renewal). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Interpretation and analysis of radar information:

(A) Radar navigation (including visual techniques)—determining positions, and detecting changes in the relative motion, of other vessels.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Determining the course and speed of another vessel.

(D) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(E) Detecting changes of course or speed of another vessel after its initial course and speed have been established.

(F) Applying the Navigational Rules, and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(G) Use of radar in maintaining situational awareness.

(ii) Plotting (by any graphically-correct method):

(A) Principles and methods of plotting relative and true motion.

(B) Practical-plotting problems.

(5) Radar Observer (Inland Waters and GIWW: Renewal). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the interpretation and analysis of radar information, including:

(i) Radar navigation (including visual techniques—determining positions, and detecting changes in the relative motion, of other vessels.

(ii) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(iii) Determining the course and speed of another vessel.

(iv) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(v) Detecting changes of course or speed of another vessel after its initial course and speed have been established.

(vi) Applying the Navigational Rules, and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(vii) Use of radar in maintaining situational awareness.

(6) Radar Observer (Rivers: Renewal). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the interpretation and analysis of radar information, including:

(i) Radar navigation (including visual techniques)— determining positions, and detecting changes in the relative motion, of other vessels.

(ii) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(iii) Applying the Navigational Rules, and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(iv) Use of radar in maintaining situational awareness.

3. Section 10.306 is revised to read as follows:

§ 10.306 Radar-Operation course and certificate.

(a) A certificate of training from a Radar-Operation course may, as provided by 46 CFR 15.815(c)(2), suffice instead of a Radar-Observer endorsement. It is valid until the holder's license is renewed or upgraded, or expires, whichever occurs first.

(b) Each Radar-Operation course must contain at least 4 hours of instruction on the following subjects:

(1) Fundamentals of radar:

(i) How radar works.

(ii) Factors affecting the performance and accuracy of marine radar.

(iii) Purpose and functions of the main components that constitute a typical marine-radar system.

(2) Operation and use of radar:

(i) Purpose and adjustment of controls.

(ii) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(iii) Effects of sea return, weather, and other environmental conditions.

(iv) Limitations of radar resulting from design factors.

(v) Safety precautions associated with use and maintenance of marine radar.

(vi) Measurement of ranges and bearings.

(vii) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(3) Interpretation and analysis of radar information:

(i) Radar navigation—determining the position and direction of movements of a vessel.

(ii) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(iii) Applying the Navigational Rules, Chapters 30 and 34 of Title 33 U.S. Code [Commandant Instruction M16672.2C or equivalent, as amended], and other factors to consider when determining changes of course or speed of a vessel to prevent collisions on the basis of radar observation.

(c) Each Radar-Operation course must be conducted by a person who possesses

the knowledge and skills taught in the course, with at least one year of experience in their practical application, except that—

(1) A marine instructor or company official may substitute a currently valid certificate from an approved Radar-Observer course (Unlimited, or Inland Waters and GIWW) for the one year of experience; and

(2) An instructor of any approved Radar-Observer course may teach a Radar-Operation course without further seagoing experience.

(d) When a holder of the Radar-Operation certificate seeks a Radar-Observer endorsement, he or she is an applicant for an original endorsement rather than for renewal of an endorsement.

4. Section 10.480 is revised to read as follows:

§ 10.480 Radar observer.

(a) This section contains the requirements that an applicant must meet to qualify as a radar observer. (Part 15 of this chapter specifies who must qualify as a radar observer.)

(b) If an applicant meets the requirements of this section, one of the following Radar-Observer endorsements will be added to his or her deck officer's license:

(1) Radar Observer (Unlimited).

(2) Radar Observer (Inland Waters and GIWW).

(3) Radar Observer (Rivers).

(c) Endorsement as Radar Observer (Unlimited) is valid on all waters. Endorsement as Radar Observer (Inland Waters and GIWW) is valid only for those waters other than the Great Lakes covered by the Inland Navigational Rules. Endorsement as Radar Observer (Rivers) is valid only on any river, canal, or similar body of water designated by the OCMI, but not beyond the boundary line.

(d) Except as provided by paragraphs (e) and (f) of this section, each applicant for a Radar-Observer endorsement or for renewal of an endorsement must complete the appropriate course approved by the Coast Guard, receive the appropriate certificate of training, and present the certificate to the OCMI.

(e) An applicant who possesses a Radar-Observer endorsement, resides in a remote geographic area, and can substantiate to the satisfaction of the OCMI that the applicant's absence will disrupt normal movement of commerce, or that the applicant cannot attend an approved Radar-Observer renewal course, may have his or her endorsement renewed upon successful completion of an examination administered by the Coast Guard, or by a third party acceptable to the Coast Guard.

(f) Except as provided by paragraph (k) of this section, a Radar-Observer endorsement issued under this section is valid for 5 years after the month of issuance of the certificate of training from a course approved by the Coast Guard. It is not terminated by the issuance of a new license during these 5 years.

(g) The month and year of the expiration of the Radar-Observer endorsement are printed on the license.

(h) A Radar-Observer endorsement may be renewed at any time.

(i) An applicant for renewal of a license that does not need a Radar-Observer endorsement may renew the license without meeting the requirements for the endorsement.

(j) An applicant seeking to raise the grade of a license or increase its scope, where the increased grade or scope requires a Radar-Observer certificate, may use an expired certificate to fulfill that requirement.

(k) The renewal date of a Radar-Observer endorsement may be extended beyond the normal 5-year duration to coincide with the renewal date of the license to which it pertains. This extension may not exceed 2 years and will be necessary only once, to synchronize the two renewal dates.

Dated: March 3, 1997.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–5987 Filed 3–10–97; 8:45 am]

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