3–18–97
Vol. 62 No. 52
Pages 12739–12914

Tuesday
March 18, 1997

federal register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–67–AD; Amendment 39–9966; AD 97–06–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires replacing certain aileron/rudder trim control modules with an improved module that contains an improved rudder trim switch that precludes the problems of sticking associated with the existing switch. This amendment is prompted by reports of sticking conditions in the rudder trim switch. The actions specified by this AD are intended to prevent such sticking, which could result in uncommanded movement of the rudder and consequent deviation of the airplane from its set course.

DATES: Effective April 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hania Younis, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2764; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes was published in the Federal Register on October 3, 1996 (61 FR 51624). That action proposed to require replacing the aileron/rudder trim control module P8–43 with an improved module that precludes the problems associated with sticking that were identified in the existing module.

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

Support for the Proposal

Two commenters support the proposed AD.

Request To Clarify Description of Replacement Module

One commenter requests that the FAA's description of the replacement module be revised to make it more specific. This commenter points out that the Summary and Discussion sections of the preamble to the notice described the replacement module as a ''new model that contains an improved rudder trim switch to reduce internal friction.'' However, the commenter states that the new module incorporates a switch that is of an entirely different design and, therefore, accomplishes more than just reduce friction. The new switch is much simpler in design and is, therefore, more reliable; the simpler design also eliminates multiple causes of sticking that have been identified in the existing switch. The commenter suggests that the description of the new module include this information.

The FAA concurs that the commenter's description is more specific. The FAA has revised the descriptive language in the appropriate portions of this preamble to the final rule to include the commenter's suggested wording.

Request to Clarify Description of Unsafe Condition

This same commenter requests that the FAA's description of the unsafe condition, which appeared in the Discussion section of the preamble to the notice, be revised. The commenter points to a sentence in that section that stated, ''If the trim switch sticks, it may be prevented form returning to the center position.'' The commenter states that this sentence would be more accurate if stated as ''If the trim switch sticks, it may be prevented from returning to the center position *when the switch knob is released.*''

The FAA does not concur. The FAA does acknowledge that the majority of incidents prompting this AD action have involved switches that did not return to the center position when the switch knob was released. However, according to the manufacturer, it is possible that rudder pedals would be required to control rudder movement; i.e., it is possible that even returning the switch to the center position manually may not be effective. Therefore, the commenter's proposed wording would not be accurate for all possible failure scenarios.

Request to Change Proposed Actions Altogether

One commenter, a non-U.S. operator, requests that the proposal be revised by eliminating the proposed actions altogether because they will ''only generate additional maintenance costs without affecting safety positively.'' Instead, the commenter suggests that the FAA propose requiring (1) a clearance check between the rudder trim knob and the control panel, and (2) restrictions on food and beverages in the cockpit. This commenter maintains that the main cause of rudder trim runaways is due to interference between the rudder trim knob and the control panel, and, in most cases, this interference is the result of dirt (i.e., dust and food) collecting beneath the knob and contaminating the switches. In light of this, the commenter considers that requiring a gap check and a cleaning task would be a better course of action.

The FAA does not concur. While a gap check and cleaning task would be effective in removing contamination once it occurs, the newly designed

module required by this AD will *prevent* contamination of the switch. Therefore, it eliminates the potential for the circumstances prompting the unsafe condition from developing, and does not impose additional restrictions or cleaning requirements.

Conclusion

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

Cost Impact

There are approximately 1,159 Boeing Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 537 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,063 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $667,491, or $1,243 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–06–09 Boeing: Amendment 39–9966. Docket 96–NM–67–AD.

Applicability: Model 737–300, –400, and –500 series airplanes; as listed in Boeing Alert Service Bulletin 737–27A1198, dated June 6, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent sticking conditions in the rudder trim switch, which could result in uncommanded movement of the rudder and consequent deviation of the airplane from its set course, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace the aileron/rudder trim control module P8–43 having part number (P/N) 69–73703–5 or 69–73703–6 with a new aileron/rudder trim control module having P/N 69–73703–8, in accordance with Boeing Alert Service Bulletin 737–27A1198, dated June 6, 1996.

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

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

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

(d) The replacement shall be done in accordance with Boeing Alert Service Bulletin 737–27A1198, dated June 6, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 21, 1997.

Issued in Renton, Washington, on March 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6541 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–26–AD; Amendment 39–9969; AD 97–06–12]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that currently require inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts, if necessary. Those actions were prompted by reports of cracking in the main fittings of the NLG. This amendment requires that, for certain airplanes, the inspections be accomplished at reduced intervals. This amendment is prompted by the results of new analyses of the cracking that were conducted by the manufacturer of the NLG. The actions specified by this AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Effective April 21, 1997.

The incorporation by reference of British Aerospace Service Bulletin S.B. 32–131, Revision 3, dated October 18, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of April 21, 1997.

The incorporation by reference of British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 6, 1995 (60 FR 12413, March 7, 1995).

The incorporation by reference of British Aerospace Service Bulletin S.B. 32–131, Revision 1, dated November 12, 1992, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 7, 1993 (58 FR 47036, September 7, 1993).

The incorporation by reference of British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 12, 1993 (57 FR 57883, December 8, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–17–04, amendment 39–8674 (58 FR 47036, September 7, 1993), and AD 95–04–06, amendment 39–9158 (60 FR 12413, March 7, 1995), which are applicable to British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, was published in the Federal Register on October 18, 1996 (61 FR 54366). The action proposed to supersede AD 93–17–04 and AD 95–04–06 to continue to require either eddy current or ultra high sensitivity penetrant inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts, if necessary. It also proposed to require that inspections of certain airplanes equipped with specific NLG's be conducted at reduced intervals.

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

Conclusion

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

Cost Impact

There are approximately 52 Model BAe 146 and Model Avro 146–RJ series airplanes of U.S. registry that will be affected by this proposed AD.

The inspections that are currently required by AD 93–17–04 and AD 95–04–06, and retained in this proposal, take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $9,360, or $180 per airplane, per inspection cycle.

Although this amendment adds no new actions, the associated costs for some operators will increase somewhat since certain inspections will be required to be performed more frequently.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8674 (58 FR 47036, September 7, 1993) and amendment 39–9158 (60 FR 12413, March 7, 1995), by adding a new airworthiness directive (AD), amendment 39–9969, to read as follows:

97–06–12 British Aerospace Regional Aircraft Limited, Avro International: Amendment 39–9969. Docket 96–NM–26–AD. Supersedes AD 93–17–04, amendment 39–8674; and AD 95–04–06, amendment 39–9158.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main fitting, which could lead to collapse of the nose landing gear (NLG) during landing, accomplish the following:

Restatement of Continuing Requirements

(a) For Model BAe 146 series airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after October

7, 1993 (the effective date of AD 93–17–04, Amendment 39–8674), whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(b) For Model Avro 146–RJ series airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after April 6, 1995 (the effective date of AD 95–04–06, Amendment 39–9158), whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(c) For Model BAe 146 series airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after October 7, 1993 (the effective date of AD 93–17–04, Amendment 39–8674), whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(d) For Model Avro 146–RJ series airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after April 6, 1995 (the effective date of AD 95–04–06, Amendment 39–9158), whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

New Requirements

(e) For Model BAe 146 and Avro 146–RJ series airplanes on which NLG part number 200876001 or 200876003 has been installed: Within 2,000 landings from the immediately preceding inspection conducted in accordance with paragraph (c) or (d) of this AD, or within 3 months after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 2,000 landings. Accomplishment of this inspection terminates the requirements of paragraph (c) and (d) of this AD.

Note 2: The British Aerospace service bulletin references a Messier-Dowty Service Bulletin 145–32–109, Revision 2, dated August 2, 1995, as an additional source of service information.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113. After replacement or repair, repeat the inspection at intervals not to exceed 2,000 landings.

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

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

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

(h) The inspections shall be done in accordance with the following British Aerospace service bulletins:

Service bulletin number	Revision level	Date
S.B. 32–131	(Original)	December 6, 1991.
S.B. 32–131	Revision 1	November 12, 1992.
S.B. 32–131	Revision 2	July 10, 1993.
S.B. 32–131	Revision 3	October 18, 1995.

The incorporation by reference (IBR) of certain of these service bulletins was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as follows:

Service bulletin number/revision	IBR approval date	Federal Register citation
S.B. 32–131, (original)	January 12, 1993	(57 FR 57883, December 8, 1992).
S.B. 32–131, Revision 1	October 7, 1993	(58 FR 47036, September 7, 1993).
S.B. 32–131, Revision 2	April 6, 1995	(60 FR 12413, March 7, 1995).

The incorporation by reference of British Aerospace Service Bulletin S.B. 32–131, Revision 3, dated October 18, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of any of these service bulletins

may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) This amendment becomes effective on April 21, 1997.

Issued in Renton, Washington, on March 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6717 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Docket No. 96–ACE–22]

Amendment to Class E Airspace, Alliance, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule, published on January 14, 1997, amends the Class E airspace area at Alliance Municipal Airport, Alliance, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System. The effect of the direct final rule is to provide additional controlled airspace for aircraft departing Alliance Municipal Airport.

EFFECTIVE DATE: May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the Federal Register on January 14, 1997 (62 FR 1828). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such as adverse comment, was received within the comment period, the regulation would become effective on May 22, 1997. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–6399 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Docket No. 96–ACE–24]

Amendment to Class E Airspace, Sidney, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule, published on January 14, 1997, amends the Class E airspace area at Sidney Municipal Airport, Sidney, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System. The effect of the direct final rule is to provide additional controlled airspace for aircraft departing Sidney Municipal Airport.

EFFECTIVE DATE: May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the Federal Register on January 14, 1997 (62 FR 1827). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on May 22, 1997. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–6398 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release No. 34–38387; IC–22553; FR–49; File No. S7–20–96]

RIN 3235–AG70

Implementation of Section 10A of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting revisions to its rules to implement the reporting requirements in section 10A of the Securities Exchange Act of 1934 (the ''Exchange Act''). Section 10A requires, among other things, that the auditor of an issuer's financial statements report to the issuer's board of directors certain uncorrected illegal acts of the issuer, and that the issuer notify the Commission that it has received such a report. If the issuer fails to provide that notice, the auditor is required by section 10A to furnish directly to the Commission the report given to the Board. The amendments to the Commission's Exchange Act Rules implement those reporting requirements. The Commission also is adopting revisions to Regulation S–X to conform the definition of ''audit'' in that regulation with the wording in section 10A.

EFFECTIVE DATE: The rule revisions are effective April 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Robert E. Burns or W. Scott Bayless, at (202) 942–4400, Office of the Chief Accountant, Mail Stop 11–3, or Kathleen Clarke, at (202) 942–0724, Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to its Exchange Act Rules, 17 CFR 240, by adding Rule 10A–1, and Regulation S–X, 17 CFR 210, by revising Rule 1–02.

I. Background

Title III to the Private Securities Litigation Reform Act of 1995 (the ''Reform Act''), Public Law No. 104–67, enacted on December 22, 1995, added section 10A to the Exchange Act. As discussed below, section 10A requires that each audit under the Exchange Act [1] include procedures regarding the detection of illegal acts, the identification of related party transactions, and the evaluation of the issuer's ability to continue as a going concern. Section 10A also codifies certain professional auditing standards regarding the detection of illegal acts [2] by issuers and imposes expanded obligations on auditors [3] to report in a timely manner certain uncorrected illegal acts to an issuer's board of directors. It further requires the issuer, or if the issuer fails to do so then the auditor, to provide information regarding the illegal act to the Commission.

On August 22, 1996, the Commission published for comment proposed revisions to its rules to implement the reporting requirements set forth in section 10A and to amend the definition of ''audit'' in Regulation S–X to conform with the provisions of that section.[4] The Proposing Release contains a discussion of each paragraph of section 10A. Interested parties may wish to refer to the Proposing Release for additional background information.

More specifically, section 10A(a) provides that each audit required by the Exchange Act of issuers' financial statements include, ''in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—''

1. Procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

2. Procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

3. An evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern during the ensuing fiscal year.[5]

Certain procedures in each of these three areas already are required by generally accepted auditing standards (''GAAS'')[6] in the United States and are further codified in the *Statements on Auditing Standards* (''SAS'')[7] adopted by the Auditing Standards Board (''ASB''), the senior technical body for auditing matters of the American Institute of Certified Public Accountants (''AICPA'').[8]

In addition to the requirement in section 10A(a) that auditors perform procedures designed to enhance the detection of fraudulent financial reporting, section 10A(b) contains provisions that would require an auditor to report directly to the Commission certain detected illegal acts if the issuer fails to do so.

Under section 10A(b), if, while conducting the audit of the issuer's financial statements, the auditor becomes aware of information indicating that an illegal act (whether or not material to the financial statements) has occurred or may have occurred, then the auditor would be required, in accordance with GAAS, ''as may be modified or supplemented from time to time by the Commission,'' to determine whether it is ''likely'' that an illegal act has occurred and, if so, its possible effect on the financial statements (including any contingent monetary effects, such as fines, penalties, and damages).[9] The auditor would be required to inform the issuer's management of the illegal act ''as soon as practicable.'' In addition, the auditor must assure him/herself that the issuer's board of directors is adequately informed, by management or otherwise, of any detected illegal act.[10]

Although GAAS contains procedures for similar notification of illegal acts to managements and boards of directors,[11] section 10A(b) contains the additional requirement that these notifications occur ''as soon as practicable.'' [12]

After the auditor determines that the audit committee or the board of directors has been adequately informed of an illegal act and the auditor reaches

[1] Because section 10A applies to audits under the Exchange Act, it and Rule 10A–1 apply to audits of the financial statements of foreign private issuers that are required under that Act.

[2] Section 10A(f) defines the term ''illegal act'' broadly to mean ''an act or omission that violates any law, or any rule or regulation having the force of law.'' This definition is consistent generally with *Statement on Auditing Standards No. 54*, ''Illegal Acts by Clients,'' ¶ 2 (January 1, 1989), AU § 317.02, which states, ''the term illegal acts * * * refers to violations of laws or governmental regulations.''

[3] For the purpose of this release, the term ''auditor'' refers to any independent public or certified public accountant who is performing or has performed an audit of a registrant's financial statements and whose audit report has or will be filed with the Commission in accordance with the federal securities laws or the Commission's regulations. *See, e.g.*, sections 12(b)(1) (J) and (K), 13(a)(2), and 17(e) of the Exchange Act, 15 U.S.C. 78*l*(b)(1) (J) and (K), 78m(a)(2), and 78q(e), and the Commission's Regulation S–X, 17 CFR § 210. The term ''independent accountant'' is used in the regulatory text in order to be consistent with existing provisions in Regulation S–X.

[4] Securities Exchange Act Release No. 37594, Investment Company Act Release No. 22162, File No. S7–20–96 (August 22, 1996) [61 FR 45730] (the ''Proposing Release'').

[5] Section 10A(a) (1), (2), and (3).

[6] In February 1941, the Commission amended Rule 2–02 of Regulation S–X, 17 CFR § 210.2–02, to require that the independent accountant state in his or her report ''whether the audit was made in accordance with generally accepted auditing standards * * *'' Accounting Series Release No. 21 (February 5, 1941). In this release, the Commission defined ''generally accepted auditing standards'' to mean the application of ''generally recognized normal auditing procedures'' with professional competence by properly trained persons. The Commission defined ''generally recognized normal auditing procedures'' to be those normally employed by skilled accountants and those prescribed by authoritative bodies dealing with the subject of auditing, such as accounting societies and governmental bodies having jurisdiction in the area. *Id.* Following this addition to the Commission's rules, the relevant professional committee at the time, the Committee on Auditing Procedure, began a study to determine which auditing standards should be included within ''GAAS.'' In 1948, the membership of the predecessor organization to the American Institute of Certified Public Accountants (''AICPA'') approved ten standards as constituting GAAS. *See*, AICPA, Codification of Statements on Auditing Standards, AU § 150.02. These ten standards are supplemented by *Statements on Auditing Standards*, which currently are issued by the Auditing Standards Board of the AICPA.

[7] Currently effective *Statements on Auditing Standards* are published by the American Institute of Certified Public Accountants in the *Codification of Statements on Auditing Standards*. Provisions in the Codification are designated as ''AU § __.'' For standards addressing those procedures mandated by section 10A, *see* SAS 54, ''Illegal Acts by Clients'' (January 1, 1989), AU § 317; SAS 45, ''Related Parties'' (September 30, 1983), AU § 334; and SAS 59, 64, and 77 *reprinted in* ''The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern'' (January 1, 1989), AU § 341. *See also* SAS 53, ''The Auditor's Responsibility to Detect and Report Errors and Irregularities'' (January 1, 1989), AU § 316. The ASB recently adopted a revision to SAS 53, which will be entitled ''Consideration of Fraud in a Financial Statement Audit'' and designated as SAS 82. This new standard should be published in Spring 1997 and will be applicable to the audits of 1997 financial statements.

[8] The ASB's 15 members serve on a part-time basis and are appointed for one year terms that may be extended for up to three years.

[9] Section 10A(b)(1)(A). *See*, SAS 54, ¶¶ 10–15, AU § 317.10-.15. Paragraph 11 of SAS 54 sets forth additional audit procedures that might be necessary once the auditor becomes aware of a possible illegal act.

[10] Section 10A(b)(1)(B). See, SAS 54, ¶ 17, AU § 317.17.

[11] *See*, SAS 54, ¶¶ 10 and 17, AU § 317.10 and .17.

[12] The addition of this time period reflects the original legislative efforts in this area to provide an earlier warning to the SEC of registrants' potential illegal acts than may occur under the current Form 8-K procedures, *see* note 20 *infra*, and in audit reports. *See* H.R. Rep. No. 102–890, 102d Cong., 2d Sess. 3 (1992), which contained the predecessor legislation to Section 10A and stated:

This legislation amends the Securities Exchange Act of 1934 (Exchange Act) to improve fraud detection and disclosure with respect to public companies by codifying auditing standards in certain specified areas and by providing a mechanism for earlier warning to the Securities and Exchange Commission of certain illegal acts by registrants.

three specified conclusions, the auditor is required by section 10A(b)(2) to report those conclusions directly to the board of directors ''as soon as practicable.'' The three conclusions set forth in section 10A(b)(2) that trigger the auditor's obligation to report to the board are that:

1. The illegal act has a material effect [13] on the issuer's financial statements,

2. Senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act, and

3. The failure to take remedial action is reasonably expected to warrant either a departure from the auditor's standard audit report,[14] when made, or the auditor's resignation from the audit engagement.[15]

If the board of directors receives a report that the auditor has reached these conclusions, then the board has one business day to notify the Commission that it received such a report. If the auditor does not receive a copy of the board's notice to the Commission within that one business day period, then by the end of the next business day the auditor is required to furnish directly to the Commission a copy of the report given to the board (or the documentation of any oral report [16]).[17] The auditor's resignation from the audit engagement does not negate the auditor's obligation to furnish his or her report to the Commission in these circumstances.[18]

II. Discussion of Rule Amendments

A. Rule 10A–1.

Rule 10A–1 is based on the premise that the notices and reports under section 10A are to assist the Commission in performing its enforcement responsibilities and, therefore, will be non-public. Disclosure to the public of issuers' illegal acts will continue to be made in modified audit reports [19] or, when the auditor has resigned, been dismissed, or elected not to stand for re-election, on Form 8–K [20] under the Exchange Act and on Form N–SAR [21] under the Investment Company Act of 1940 (the ''Investment Company Act''), among others.

In testifying on prior bills that contained the same reporting requirements, the Commission stated, ''[W]e anticipate that reports filed under section 10A would be confidential and exempt from disclosure under the Freedom of Information Act.'' [22] The Commission further noted,

> Premature disclosure of the issuer and auditor reports could, among other things, interfere with the Commission's investigation, deprive the issuer or other persons of the right to a fair trial or impartial adjudication, constitute an unwarranted invasion of privacy, or disclose a confidential source. In addition, issuer and auditor reports under Section 10A might contain confidential commercial or financial information exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4).[23]

The Commission's testimony also states that the direct reporting provisions in the bill might provide an earlier warning of certain illegal acts that could allow the Commission to begin enforcement investigations at an earlier date.[24]

Accordingly, Rule 10A–1 provides that section 10A notices provided by the board and reports submitted by the auditor will be non-public and exempt from disclosure under the Freedom of Information Act (''FOIA'') to the same extent as the Commission's investigative records.[25]

Commentators responding to the Proposing Release supported the position that reports and notices under section 10A should be non-public. Some suggested, however, that proposed Rule 10A–1 was unclear as to the availability of FOIA exemptions, in addition to the exemptions for investigative records, for the information contained in these notices and reports. An instruction has been added to Rule 10A–1(c), therefore, specifically to notify issuers and auditors that they may apply for confidential treatment under additional FOIA exemptions in accordance with the Commission's normal procedures.[26]

Despite the confidential nature of the reports under section 10A, these reporting requirements should improve the quality of public disclosures in

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[13] The auditor should consider both the quantitative and qualitative materiality of the act, including contingent liabilities that might be created by the illegal act. *See, e.g.*, SAS 54, ¶ 13, AU § 317.13, and SAS 47, ''Audit Risk and Materiality in Conducting an Audit,'' ¶ 6 (June 30, 1984), AU § 312.06.

[14] *See*, SAS 58, ''Reports on Audited Financial Statements,'' ¶ 10 (January 1, 1989), AU § 508.10, for a general discussion of the circumstances that may require the auditor to depart from the standard report and the types of opinions, other than the standard report, that may be expressed by the auditor in various circumstances.

[15] Section 10A(b)(2) (A), (B), and (C). *See generally*, SAS 54, ¶¶ 18–22, AU § 317.18–.22.

[16] For documentation requirements under GAAS, *see, e.g.*, SAS 54, ¶ 17, AU § 317.17, and SAS 61, ''Communication with Audit Committees,'' ¶ 3 (January 1, 1989), AU § 380.03.

[17] Section 10A(b)(3).

[18] Section 10A(b)(4).

[19] For the effect of illegal acts on the audit report, see, SAS 53, ¶¶ 26 and 27, AU § 316.26 and .27, and SAS 54, ¶¶ 18–21, AU § 317.18–.21. *See generally*, SAS 58, 64, and 79 *reprinted in Reports on Audited Financial Statements* (January 1, 1989), which describes the standard report and the various opinions that may be reflected in the auditor's report. SAS 58, ¶¶ 7–10, AU § 508.07–.10.

[20] Item 4 of Form 8–K, 17 CFR § 249.308, Item 304 of Regulation S–K, 17 CFR § 229.304, and Item 304 of Regulation S–B, 17 CFR § 228.304. In summary, these provisions state that a registrant must file a Form 8–K, providing the information required by item 4 of that form, within five business days of the date that the registrant's auditor (or an independent accountant upon whom the auditor expressed reliance in its audit report regarding a significant subsidiary) resigns, declines to stand for re-election, or is dismissed, and within five business days of the date a new auditor is engaged. The registrant is to ask the former auditor to provide the registrant with a letter indicating whether the former auditor agrees with the disclosures in the Form 8–K that reports the termination of the audit engagement and, if not, the respects in which the auditor disagrees. This letter is to be filed with the Commission as an exhibit by amendment to the registrant's Form 8–K within 10 business days of the date that the Form 8–K was filed.

The registrant's Form 8–K must state, among other things: whether the former auditor resigned, was dismissed, or declined to stand for re-election and the date thereof; whether the auditor modified his or her report on the registrant's financial statements for either of the last two fiscal years and, if so, the nature of the modification; whether the decision to change auditors was recommended or approved by the audit committee or board of directors; whether, in connection with the audits of the financial statements for the two most recent fiscal years, and any subsequent interim period, there were any disagreements between the auditor and the registrant on any matter of accounting principles or practices, auditing scope or procedure, or financial statement disclosure. The Form 8–K also must provide disclosure of any instance within the applicable time period where the former auditor advised the registrant that (1) The internal controls necessary for the registrant to develop reliable financial statements did not exist, (2) information had come to the auditor's attention that led him or her no longer to be able to rely on management's representations, or that made the auditor unwilling to be associated with the registrant's financial statements, (3) there was a need to expand significantly the scope of the audit and, due to the auditor's resignation or for any other reason, the scope was not expanded, or (4) information had come to the auditor's attention affecting the reliability of past audit reports or financial statements and the issue had not been resolved to the auditor's satisfaction prior to the auditor's resignation, dismissal, or declination to stand for re-election.

[21] Sub-item 77K of Form N–SAR, 17 CFR § 274.101, requires investment companies filing Form N–SAR to provide the information required by item 4 of Form 8–K. Sub-item 77K of Form N–SAR notes that notwithstanding the requirements in Form 8–K to file more frequently, registrants need only file such information semi-annually in accordance with the requirements of Form N–SAR.

[22] Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, *Concerning H.R. 574, The Financial Fraud Detection and Disclosure Act*, Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong., 1st Sess., 32 (February 18, 1993).

[23] *Id.*, at 32 n. 36.

[24] *Id.*, at 31.

[25] Rule 10A–1(c). *See also* 5 U.S.C. 552(b)(7), which exempts from disclosure certain ''records or information compiled for law enforcement purposes.''

[26] *See* 17 CFR § 200.83.

Forms 8–K and N–SAR and in audit reports on issuers' financial statements, because it is unlikely that issuers and auditors will make public disclosures that are incompatible with the confidential reports made to the Commission. Also, the direct reporting requirements in section 10A should give auditors additional leverage to prompt management to correct illegal acts and to make appropriate adjustments in their financial statements.

Rule 10A–1 designates the Commission's Office of the Chief Accountant (''OCA'') as the appropriate office to receive the notice provided by any issuer under section 10A(b)(3) [27] and any reports provided by auditors under section 10A(b)(3) or 10A(b)(4).[28] No commentators objected to OCA as the designated party to receive these notices and reports. OCA expeditiously will forward copies of the notice or report to all appropriate offices and divisions within the Commission. The notice or report may be provided to other authorities, as appropriate.[29]

Delivery of the notice or report to OCA may occur under Rule 10A–1 in any manner, provided the notice or report is received by OCA within the statutory time period.[30] Currently, the most timely manner of delivery may be through submission of a facsimile,[31] telegraph, or personal delivery. Issuers should be aware that providing such information on the Edgar filing system, however, may result in the information becoming available to the public. In the future, procedures may be developed for issuers and auditors to deliver confidential information directly to OCA via electronic mail. Rule 10A–1 would permit use of such means of delivery.[32]

Rule 10A–1(a) also sets forth the required contents for a issuer's notice to the Commission. This notice must be in writing and identify the issuer and the auditor, and state the date the auditor made its report to the board. Under the rule proposal, the issuer also would provide a summary of the report. The summary would describe the act and the potential impact of that act on the issuer's financial statements. This information is consistent with the requirement under GAAS that the auditor's communication with the issuer's audit committee ''should describe the act, the circumstances of its occurrence, and the effect on the financial statements.'' [33] One commentator suggested that issuers have the option of providing either the summary of the independent accountant's report, as proposed, or directly providing that report to OCA. This commentator noted, however, that if an issuer submits the independent accountant's report to OCA a question may arise regarding the availability to the independent auditor of the section 10A(c) protection against civil liability for the findings, conclusions, or statements in his or her report.[34] As adopted, Rule 10A–1 incorporates the commentator's suggestion and permits issuers the option of providing either a summary of the independent accountant's report or a copy of that report. To clarify the application of the section 10A(c) safe harbor, Rule 10A–1 now provides that the safe harbor available to auditors shall apply not only when the report is furnished to OCA by the auditor but also when it is provided by the issuer.

As had been proposed, Rule 10A–1(a) also specifically permits an issuer to include additional information with the required notice to the Commission regarding the issuer's view of, and response to, the section 10A report it has received from the auditor.

Regarding reports filed by auditors, Rule 10A–1(b) specifies that if the report does not identify clearly both the issuer and the auditor, then the auditor must attach that information to the report submitted to OCA.

Rule 10A–1 makes clear that providing the notice or report in accordance with section 10A and Rule 10A–1 does not, in any way, affect the obligations of the issuer and the auditor to file and make all applicable public disclosures required by the Commission's rules, including, without limitation, Forms 8–K and N–SAR, and of the auditor to comply with GAAS reporting requirements.[35] Similarly, Rule 10A–1 states that the confidential nature of the notice and the report to the Commission does not diminish an issuer's or auditor's obligations to make full disclosures required by the Commission's rules, forms, reports, or disclosure items, or by applicable professional standards.

In response to the Proposing Release, the Commission received additional comments requesting it to interpret or amend certain additional provisions of section 10A. For example, some commentators suggested that the Commission amend the statutory definition of ''illegal act'' to follow more closely the definition in the auditing literature.[36] Another commentator recommended that auditors be required to report all illegal acts to the board of directors (as opposed to management), not merely those acts that are material to the financial statements. One commentator suggested that the Commission extend the protection for auditors against civil liability found in section 10A(c) for statements in reports submitted to the Commission under section 10A(b), to statements made by the auditor in additional documents and in other contexts. Commentators also requested that the Commission extend the one-business-day reporting periods in the statute to five business days. Such comments, however, are beyond the scope of this rulemaking proceeding and, in some cases, request that the Commission promulgate rules contrary to the statutory mandate of section 10A.

B. Rule 1–02(d)

The Commission is adopting the proposed amendment to conform the definition of ''Audit (or examination)'' in Rule 1–02(d) of Regulation S–X with section 10A. The amendment notes that audits of the financial statements of Commission issuers should be performed ''in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission.'' The purpose of this amendment is to alert auditors and issuers to the possibility that additional

[27] Rule 10A–1(a).

[28] Rule 10A–1(b).

[29] *See* 17 CFR § 240.24c–1.

[30] Rule 10A–1 (a) and (b).

[31] The phone number for OCA's facsimile machine currently is (202) 942–9656. Such phone numbers, however, are subject to change without notice and registrants and auditors should verify the accuracy of the number before use.

[32] A similar provision applies to auditors of broker-dealers. *See* Rule 17a–5(h)(2) under the Exchange Act, 17 CFR § 240.17a–5(h)(2), which states that if, during the course of audit or interim work, the auditor determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or certain other practices and procedures, then the auditor shall call those inadequacies to the attention of the chief financial officer of the broker-dealer, who has the obligation to notify the Commission and the designated examining authority within 24 hours thereafter. If the auditor does not receive a copy of that notice within that 24 hour period, or if the auditor disagrees with the statements in the notice, then the auditor must inform the Commission and the designated examining authority of the material inadequacy within the next 24 hours.

[33] SAS 54, ¶ 17, AU § 317.17.

[34] Section 10A(c) limits auditors' liability in private rights of action for ''any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto''; paragraphs (3) and (4) of subsection (b) set forth the issuer and auditor reporting obligations.

[35] In addition, one of the membership requirements of the SEC Practice Section of the AICPA is that members notify registrants in writing of the cessation of an auditor-client relationship. The member also is required to send a copy of that notification to the Commission's Office of the Chief Accountant.

[36] *See* SAS 54, ¶ 2, AU § 317.02, discussed *supra* note 2.

audit procedures, beyond those required by GAAS, may be required by the Commission in certain circumstances.

Some commentators objected to the proposed revision of Rule 1–02(d) on the ground that the Commission's statutory authority to modify or supplement GAAS is limited to the three circumstances expressly set forth in section 10A; i.e., illegal acts, related party transactions, and going concern evaluations.

On the contrary, it has long been recognized by Congress and the Commission, that the Commission has broad authority to establish auditing requirements for public companies and their independent audit firms.[37] This implied authority is based on, among other things, (1) the Commission's authority to prescribe the reports to be filed with it,[38] (2) the provisions in the securities laws that require, or grant the Commission the authority to require, that certain financial statements be ''certified * * * by independent public accountants'' [39] and the Commission's authority to define technical and trade terms such as ''certified,'' [40] and (3) the Commission's authority to ensure that the representations in audit reports and the procedures behind those reports fulfill their statutory function.[41] In enacting the Reform Act, Congress clearly intended to preserve the Commission's existing implied authority regarding auditing standards, as evidenced by both the preservation clause in section 10A(e) and the Conference Committee Report.[42]

In any event, the revision to Rule 1–02(d) is not intended to change the substantive scope of the Commission's authority to set auditing standards, or to resolve any dispute that may arise over the scope of that authority in particular circumstances. Instead, this amendment is intended to provide adequate and fair notice to all parties concerned that the Commission, as well as appropriate professional authorities, may issue guidance to be considered and adhered to in the performance of audits under the Exchange Act.

As a general matter, the Commission plans to continue its practice of looking to the private sector standard setting bodies designated by the accounting profession to provide leadership in establishing and improving GAAS. Currently, the Commission staff works closely with the ASB. The staff, among other things, attends ASB meetings, reviews and provides the ASB with comments on draft Statements on Auditing Standards, and has periodic meetings with ASB representatives to discuss items on the ASB agenda and other matters of mutual concern.

The Commission has no present intention to write any new auditing standards unless it determines that the ASB, or any subsequently established standard setting organization, is unable or unwilling to address a significant auditing issue in an appropriate and timely manner. The Commission will exercise its discretion in determining the appropriateness and timeliness of the private sector response, considering the nature of the issue and other factors. Should Commission action be deemed necessary, the Commission will act promptly when required by the public interest or for the protection of investors.[43]

III. Investment Companies

Section 10A and Rule 10A–1 apply to all audits required pursuant to the Exchange Act, including those prepared on behalf of investment companies, which, among others, have reporting obligations under the Exchange Act.[44]

In the proposing release, the Commission requested comment regarding whether the reporting requirements under Rule 10A–1 should be modified to reflect the specific operations of investment companies. No commentators, however, addressed this topic. Accordingly, the Commission has determined that Rule 10A–1 will be adopted as proposed.

IV. Required Findings Regarding Impact on Competition

In the Proposing Release, the Commission requested comments on whether the proposed amendments, if adopted, would have an adverse impact on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act of 1933 and the Exchange Act. One commentator addressed this issue, indicating that the reporting provisions of proposed Rule 10A–1 would not add to any such burden that might be imposed by section 10A, especially in

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[37] *See* Report by the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, *Federal Regulation and Regulatory Reform*, 94th Cong., 2d Sess., 38 (October 1976), which states, in part, that the Commission had not then ''exercised fully its statutory authority to remedy deficiencies in generally accepted auditing standards''; *Report on the Activity of the Committee on Energy and Commerce for the 100th Congress*, House Report 100–1114, 100th Cong., 2d Sess., 364 (Dec. 23, 1988), which states, ''As the primary Agency responsible for administering the Federal securities laws disclosure requirements, the SEC has broad authority to establish auditing and accounting requirements for public companies and independent audit firms''; and Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, *Concerning H.R. 547, The Financial Fraud Detection and Disclosure Act*, Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103rd Cong., 1st Sess., 26–27 (Feb. 18, 1993), which states, in part, ''The Commission [is] prepared, should it prove necessary to fulfill its statutory mandate, to establish separate auditing standards that supplement or supplant ASB standards for SEC registrants.* * * In the same way the Commission has final authority over the establishment of new financial standards by the FASB, so too the Commission has final authority over the establishment of auditing standards to protect the public interest.''

[38] *See, e.g.*, § 13(b)(1) of the Exchange Act, 15 U.S.C. 78m(b)(1), which states, ''The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth.* * *''

[39] Items 25, 26, and 27 of Schedule A to the Securities Act of 1933, 15 U.S.C. 77aa (25), (26) and (27), and § 17(e) of the Exchange Act, 15 U.S.C. 78q, expressly require that audited financial statements be filed with the Commission. Sections 12(b)(1) (J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78l and 78m, among others, authorize the Commission to require the filing of financial statements that have been audited by independent accountants. The Commission requires that certain financial statements be audited. *See, e.g.*, Article 3 of Regulation S–X, 17 CFR § 210–3–01 *et seq.*

[40] *See, e.g.*, § 19(a) of the Securities Act of 1933, 15 U.S.C. 77s(a), and § 3(b) of the Exchange Act, 15 U.S.C. 78c(b).

[41] *See generally* James F. Strother, *The Establishment of Generally Accepted Accounting Principles and Generally Accepted Auditing Standards*, 28 Vand. L. Rev. 201, 225 (1975), which states, ''The Commission's powers with regard to auditing are considerable, even though it lacks the express authority to prescribe auditing standards and procedures that it has in the case of accounting principles.''

In the past, the Commission has not found it necessary formally to exercise its implied power to set auditing standards. In the mid-1970s, however, the Commission proposed certain procedures for auditors' reviews of interim financial statements. *See* Securities Act Release No. 5579 (April 17, 1975), Accounting Series Release No. 177 (September 10, 1975), Securities Act Release No. 5612 (September 10, 1975). This rulemaking did not go forward when the predecessor to the ASB acted to establish similar review procedures, and Commission action became unnecessary.

[42] *See* H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess., 47 (Nov. 28, 1995), which states, in part, ''The Conference Committee does not intend to affect the Commission's authority in areas not specifically addressed by this provision.''

[43] The Statement of Managers, The Private Securities Litigation Reform Act of 1995, states, at 22, ''The Conference Committee intends for the SEC to have discretion, however, to determine the appropriateness and timeliness of the private sector response. The SEC should act promptly if required by the public interest or for the protection of investors.''

[44] *See* sections 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78m(a) and 78o(d), and section 30(a) of the Investment Company Act, 15 U.S.C. 80a–29(a). Form N–SAR requires investment companies to file information with the Commission about their operations, including audited financial information. Rule 30a–1 under the Investment Company Act, 17 CFR § 270.30a–1, provides that investment companies filing annual reports on Form N–SAR are deemed to have satisfied the reporting requirements of sections 13(a) and 15(d) under the Exchange Act and section 30(a) under the Investment Company Act.

light of the non-public nature of the reports to be filed under the Rule.

The Commission has considered the proposed amendments in light of its responsibilities under section 23(a) of the Exchange Act[45] and concluded that the burdens on competition, if any, are necessary and appropriate in furtherance of the purposes of the Exchange Act, particularly section 10A.

V. Cost/Benefit Analysis

The costs of complying with Rule 10A–1, which is intended to carry out the purposes of new section 10A of the Exchange Act, are expected to be de minimis. Such costs for an issuer may include converting the information in the auditor's report to the board into a notice that conforms to the rule and delivering that notice, via facsimile or otherwise, to OCA. Costs for the auditor may include assuring that the report to the board identifies the issuer, as required by the proposed rule, and the cost of delivering that report, via facsimile or otherwise, to OCA.

Benefits of compliance with Rule 10A–1 include an earlier warning to the Commission of possible illegal acts by issuers and potential improvements in public disclosures in Forms 8–K and N–SAR regarding changes in issuers' auditors and in audit reports that are modified due to issuers' illegal acts.

Commentators specifically addressing the issue indicated either that the anticipated benefits of Rule 10A–1 outweigh the associated costs, or that the minimal reporting requirements under Rule 10A–1 would not add to any burdens imposed by section 10A of the Exchange Act.

VI. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') concerning Rule 10A–1 has been prepared in accordance with 5 U.S.C. 604. The FRFA notes that the rule is intended to implement the reporting requirements of section 10A of the Exchange Act as mandated by Congress. The rule will not impose any reporting requirements additional to those imposed by section 10A.

As discussed more fully in the FRFA, the rule will affect small entities, as defined by the Commission's rules, but only in the same manner as other entities. By statute, most issuers that fit the Commission's definitions of small entities are subject to a one-year delay in the effective date of section 10A, which makes section 10A (and accordingly Rule 10A–1) applicable to annual reports for any period beginning on or after January 1, 1997 (instead of January 1, 1996).

Regarding issuers, approximately 1,100 Exchange Act reporting companies satisfy the Commission's definition of ''small business;'' as of December 1995, approximately 5,200 broker-dealers were classified as small entities; and as of August 1995, approximately 1,770 active registered investment companies were considered small entities. Although some small auditors may be subject to the Rule 10A–1 reporting requirements, there is no specific definition of the term ''small auditor'' and information regarding auditors' revenues, earnings, and similar data is not publicly available.

There is no reliable way of determining how many small issuers or auditors will be required to file section 10A reports or notices each year concerning illegal acts so as to become subject to Rule 10A–1. It is expected, however, that OCA will receive very few issuer notices each year and even fewer auditor reports (which are filed only if an issuer fails to fulfill its reporting obligation).

The FRFA notes that alternatives for providing different means of compliance for small entities or for exempting small entities from the rule would be inconsistent with the statutory requirements of section 10A. The cost of complying with the rule should be de minimus, even for small entities, because the reporting requirements under section 10A and the rule are based on existing GAAS requirements. Moreover, the statute essentially requires only an earlier warning regarding matters that would otherwise be disclosed in Forms 8–K and N–SAR and in audit reports on issuers' financial statements.

The Commission received no comments on the Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the proposing release, and no comment letters specifically addressed to the IRFA. Two commentators indicated that the anticipated benefits of Rule 10A–1 outweigh the associated costs, and that the minimal reporting requirements of Rule 10A–1 would not materially add to the burdens Congress chose to impose by enacting section 10A.

A copy of the analysis may be obtained by contacting Robert E. Burns, Chief Counsel, Office of the Chief Accountant, U.S. Securities and Exchange Commission, Mail Stop 11–3, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Paperwork Reduction Act

As set forth in the Proposing Release, proposed Rule 10A–1 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Accordingly, the Commission submitted the proposed rules to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d), and OMB approved that collection and assigned it control number 3235–0468. This is the final notice regarding the collection of information under Rule 10A–1.

The Supporting Statement to the Paperwork Reduction Act submission noted that Rule 10A–1 is intended to implement the reporting requirements found in recently enacted section 10A of the Exchange Act, and that the rule is expected to have a negligible effect on the annual reporting and cost burden of Commission registrants. As discussed above, the notice to be provided by the issuer would contain the minimum amount of information necessary to identify the issuer and the auditor, indicate the date the auditor provided the report to the board of directors as specified in section 10A, and summarize the report given to the board. The summary would be based on information required to be given to the board of directors under GAAS. The auditor's report, furnished only in the event that the issuer does not fulfill its reporting responsibilities, would consist only of the report given to the board of directors and, if necessary, additional information to identify clearly the issuer and the auditor.

Potential respondents are entities with reporting obligations under the Exchange Act and their auditors, although it is anticipated that the reporting requirements under section 10A rarely will be triggered. On those rare occasions when the reporting requirement is triggered, it is estimated that the total recordkeeping and reporting burden, beyond that directly required by the statute, would not exceed one hour per respondent.

As notices must be filed by an issuer within one day of receiving a report from its auditor, and the auditor must file its report (if necessary) the next day, there are essentially no recordkeeping or retention requirements.

Filing the notices and reports, when necessary, is required by section 10A of the Exchange Act and therefore is

[45] 15 U.S.C. 78w(a).

mandatory. As explained above, however, the notices and reports will be kept confidential while the Commission has an enforcement interest in the information contained in those notices and reports. In addition, requests for confidential treatment of such information may be made under 17 CFR 200.83.

The Commission received no comments in response to its request for comments, pursuant to 44 U.S.C. 3506(c)(2)(B), concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's estimate of the burden of the proposed collection of information; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

List of Subjects

17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By revising § 210.1–02(d) to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d) *Audit (or examination).* The term *audit* (or *examination*), when used in regard to financial statements, means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission, for the purpose of expressing an opinion thereon.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

4. By adding an undesignated center heading and § 240.10A–1 following § 240.10(b)–21 to read as follows:

Reports Under Section 10A

§ 240.10A–1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j–1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j–1(b)(2);

(iii) Shall provide, at the election of the issuer, either:

(A) A summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the possible effect of that act on all affected financial statements of the issuer or those related to the most current three-year period, whichever is shorter; or

(B) A copy of the independent accountant's report; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Reports of the independent accountant submitted by the issuer to the Commission's Office of the Chief Accountant in accordance with paragraph (a)(2)(iii)(B) of this section shall be deemed to have been made pursuant to section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), for purposes of the safe harbor provided by section 10A(c) of the Act, 15 U.S.C. 78j–1(c).

(4) Submission of the notice in paragraphs (a)(1) and (a)(2) of this section shall not relieve the issuer from its obligations to comply fully with all other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8–K, § 249.308 of this chapter, and Form N–SAR, § 274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of item 304 of Regulation S–B or item 304 of Regulation S–K, §§ 228.304 or 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), shall submit that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of the Act. The report (or documentation) may be submitted to the Commission's Office of the Chief Accountant by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the time period set forth in section 10A(b)(3) or 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–(b)(4), whichever is applicable in the circumstances.

(2) If the report (or documentation) submitted to the Office of the Chief Accountant in accordance with paragraph (b)(1) of this section does not clearly identify both the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings with the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office), then the

independent accountant shall place that information in a prominent attachment to the report (or documentation) and shall submit that attachment to the Office of the Chief Accountant at the same time and in the same manner as the report (or documentation) is submitted to that Office.

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under items 304(a)(2)(D) and 304(a)(3) of Regulation S–K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and under items 304(a)(2)(D) and 304(a)(3) of Regulation S–B, §§ 228.304(a)(2)(D) and 228.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

(c) A notice or report submitted to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be deemed to be an investigative record and shall be non-public and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are non-public and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7) and § 200.80(b)(7) of this chapter. Nothing in this paragraph, however, shall relieve, limit, delay, or affect in any way, the obligation of any issuer or any independent accountant to make all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

Instruction to Paragraph (c)

Issuers and independent accountants may apply for additional bases for confidential treatment for a notice, report, or part thereof, in accordance with § 200.83 of this chapter. That section indicates, in part, that any person who, pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, may request that the Commission afford it confidential treatment by reason of personal privacy or business confidentiality, or for any other reason permitted by Federal law.

By the Commission.

Dated: March 12, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–6712 Filed 3–17–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 97–008]

RIN 2115–AE46

Special Local Regulations; Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Miami Super Boat Race. The event will be held on April 20, 1997, 1000 feet off the Miami Beach shore from 12:30 p.m. EDT (Eastern Daylight Time) until 3:30 p.m. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 11:30 a.m. and terminate at 4:30 p.m. EDT on April 20, 1997.

FOR FURTHER INFORMATION CONTACT: QMC T.E. Kjerulff, Coast Guard Group Miami, Florida at (305) 535–4448.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective without publication of a notice of proposed rulemaking. Final environmental replies concerning these regulations were only received in this office in early February. Publishing a NPRM and delaying its effective date would be contrary to national safety interests, since immediate action is needed to minimize potential danger to the public due to an expected large concentration of participant and spectator craft.

Discussion of Regulations

Super Boat International Productions Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator craft. The race will take place in the Atlantic Ocean 1,000 feet off the Miami Beach shore from Miami Beach Clock Tower to Atlantic Heights. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5.0 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under section 605(b) of 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 because the regulations will only be in effect for a total of 5 hours in a limited area.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B. of Commandant Instruction M16475.1B. In

accordance with that section, specifically sections 2.B.4 and 2.B.5, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying from QMC T.E. Kjerulff, Coast Guard Group Miami, Florida, (305) 535–4448.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

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

2. A temporary section 100.35T–07–007 is added to read as follows:

§ 100.35T–07–007 Miami Beach, FL.

(a) *Regulated Area.*

(1) A regulated area is established by a line joining the following points:

25°46′.3 N, 080°07′.85 W; thence to,
25°46′.3 N, 080°06′.82 W; thence to,
25°51′.3 N, 080°06′.2 W; thence to,
25°51′.3 N, 080°07′.18 W; thence along the shoreline to the starting point. All coordinates reference Datum: NAD 1983.

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and is defined by a line joining the following points, beginning from:

25°51′.3 N, 080°06′.15 W; thence to,
25°51′.3 N, 080°05′.85 W; thence to,
25°46′.3 N, 080°06′.55 W; thence to,
25°46′.3 N, 080°06′.77 W; and back to the starting point. All coordinates reference Datum: NAD 1983.

(3) A buffer zone of 300 feet separates the race course and the spectator areas.

(b) *Special local regulations.*

(1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the race course at all times.

(c) *Effective date.* These regulations become effective at 11:30 a.m. and terminate at 4:30 p.m. EDT on April 20, 1997.

Dated: March 3, 1997.

R.C. Olsen, Jr.,

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

[FR Doc. 97–6735 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–14–M

PANAMA CANAL COMMISSION

35 CFR Part 61

RIN 3207–AA35

Health, Sanitation and Communicable Disease Surveillance; Correction

AGENCY: Panama Canal Commission.

ACTION: Final rule; correction.

SUMMARY: The Panama Canal Commission published in the Federal Register of July 11, 1996, a document to eliminate the requirement for disinfecting vessels under certain conditions as set out by the World Health Organization (WHO).

DATES: March 18, 1997.

FOR FURTHER INFORMATION CONTACT: J. M. Ebernez, Director of Admeasurement, Marine Bureau, Panama Canal Commission, telephone in Balboa, Republic of Panama, 011/507–272–4567, or Ruth Huff, Assistant to the Secretary for Commission Affairs, Office of the Secretary, Panama Canal Commission, International Square, 1825 I Street NW, Suite 1050, Washington, DC 20006–5402, (Telephone: (202) 634–6441).

SUPPLEMENTARY INFORMATION: The Panama Canal Commission published a document in the July 11, 1996, Federal Register, (61 FR 36497) section § 61.155(e) was incorrect. On page 36497, in the third column, paragraph (e) should read as follows:

§ 61.155 Vessels; yellow fever.

* * * * *

(e) The disinfecting required under paragraph (a) of this section shall not be required when the index of Aedes aegypti in Panama exceeds the 1.0 index level established by the World Health Organization (WHO).

Dated: March 13, 1997.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 97–6787 Filed 3–17–97; 8:45 am]

BILLING CODE 3640–04–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8810.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines.

The revised figures for 1997 set out below are equivalent to 125% of the current Poverty Guidelines as set out at 62 FR 10856 (March 10, 1997).

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1997 POVERTY GUIDELINES*

Size of family unit	All states but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$9,863	$12,338	$11,338
2	13,263	16,588	15,250
3	16,663	20,838	19,163
4	20,063	25,088	23,075
5	23,463	29,338	26,988
6	26,863	33,588	30,900
7	30,263	37,838	34,813
8	33,663	42,088	38,725

*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $3,400 for each additional member in a family.

[2] For family units with more than eight members, add $4,250 for each additional member in a family.

[3] For family units with more than eight members, add $3,913 for each additional member in a family.

Dated: March 13, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–6830 Filed 3–17–97; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 24 and 101

[WT Docket No. 95–157; FCC 97–48]

Plan for Sharing the Costs of Microwave Relocation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Second Report and Order, the Commission amends certain aspects of the microwave relocation rules, which were first established in the Emerging Technologies proceeding and were modified and clarified in the First Report and Order and Further Notice of Proposed Rule Making in this docket. Specifically, the Commission adjusts the relocation timetables for the broadband PCS C, D, E, and F blocks by shortening the voluntary negotiation period applicable to each block for non-public safety incumbents by one year. This change will facilitate the relocation process for the most recently licensed PCS blocks and will create incentives for all parties to enter into early negotiations. The Commission does not alter the timetable for public safety incumbents in the broadband PCS C, D, E, and F blocks. In addition, the Commission permits microwave incumbents to participate in the cost-sharing program adopted in the First Report and Order. The cost-sharing program currently allows PCS licensees who relocate microwave incumbents to obtain reimbursement rights and collect reimbursement under the cost-sharing plan from later-entrant PCS licensees that benefit from the relocation.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Hamra, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Second Report and Order, adopted February 13, 1997 and released February 27, 1997. The complete text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

I. Background

1. In the Emerging Technologies proceeding, ET Docket No. 92–9, 57 FR 49020 (October 29, 1992) the Commission reallocated the 1850–1990, 2110–2150, and 2160–2200 MHz bands from private and common carrier fixed microwave services to emerging technology services. In that proceeding the Commission established the procedures for relocating 2 GHz microwave incumbents to available frequencies in higher bands or to other media. These procedures are intended to encourage incumbents to negotiate relocation agreements with emerging technology licensees or manufacturers of unlicensed devices to accelerate the deployment of emerging technologies.

2. The relocation process established in that proceeding provided two negotiation periods that must expire before an emerging technology licensee may request involuntary relocation of the incumbent. The first is a fixed two-year period for voluntary negotiations—three years for public safety incumbents, *e.g.*, police, fire, and emergency medical licensees—commencing with the Commission's acceptance of long form (Form 600) applications for emerging technology services. During that time period, the emerging technology providers and microwave licensees may negotiate any mutually acceptable relocation agreement. Such negotiations are strictly voluntary. At any time following the conclusion of the voluntary negotiation period, the emerging technology licensee may initiate a one-year mandatory negotiation period—two years for public safety licensees. During this period the parties are required to negotiate in good faith. If the parties fail to reach an agreement during these periods, the emerging technology provider may request involuntary relocation of the existing facility. As a condition of relocation, however, the emerging technology licensee is required to pay the cost of relocating the incumbent to a comparable facility.

3. In the Commission's First Report and Order in WT Docket 95–157, 61 FR 29679 (June 12, 1996) the Commission adopted a cost-sharing formula that allows a PCS licensee who relocates an incumbent microwave system to obtain reimbursement rights and collect reimbursement from later-entrant PCS licensees that benefit from the relocation under a cost-sharing plan administered by the industry. The Commission also addressed concerns

raised by PCS licensees that negotiations during the voluntary period for the A and B blocks were not progressing as fast as they should and were potentially delaying the deployment of PCS service to the public. The Commission decided that altering the timetable for A and B block negotiation periods at that time would not be in the public interest because ongoing negotiations were likely to be interrupted, while parties re-assessed their positions to the detriment of the process and ultimately, the public interest. In the Further Notice of Proposed Rule Making (Further NPRM) 61 FR 24470 (May 15, 1996) accompanying the First Report and Order, however, the Commission sought comment on a proposal to shorten the voluntary negotiation period and lengthen the mandatory negotiation period for the D, E, and F blocks and on whether these same changes should apply to the C block.

4. In the Further NPRM, the Commission also considered whether to allow microwave incumbents who pay their own relocation expenses to participate in the cost-sharing plan adopted in the First Report and Order under certain conditions. To further expedite clearing of the band, the Commission tentatively concluded that incumbents should be permitted to relocate their own links and obtain reimbursement rights pursuant to the cost-sharing plan.

II. Discussion

A. Voluntary and Mandatory Negotiation Periods for D, E, and F Blocks

5. The comments of both PCS licensees and microwave incumbents have confirmed that most incumbents are willing to negotiate reasonable relocation agreements during the voluntary negotiation period. As many PCS licensees argue, however, the current length of the voluntary period unnecessarily provides opportunities for some incumbents to demand excessive premiums from PCS licensees after they have invested substantial amounts at auction and face competitive pressure to construct their systems and enter the market, particularly on 10 MHz blocks where PCS licensees have limited flexibility to build around incumbents. In addition, because of the staggered timing of PCS licensing, D, E, and F block licensees who are unable to negotiate voluntary agreements cannot initiate mandatory negotiations for more than a year after their A and B block competitors have begun such negotiations. Thus, the current rules give the A and B block licensees a significant ''head start'' in the relocation process.

6. The Commission agrees that shortening the voluntary period for non-public safety incumbents in the D, E, and F blocks by one year will spur voluntary negotiations and speed the deployment of PCS services to the public. This modification will also enhance competitive parity by reducing the A and B block licensees' head start in the relocation process. The voluntary period for the A and B block licensees expires on April 5, 1997 (with respect to non-public safety incumbents), at which point A and B block licensees may begin mandatory negotiations. Shortening the voluntary period for D, E, and F blocks will help licensees in those blocks to initiate mandatory negotiations a year earlier than under the current rules, providing some compensation for the fact that the D, E, and F block voluntary negotiation period commenced approximately twenty-one months after the A and B block voluntary negotiation period. The A and B block voluntary negotiation period commenced April 5, 1995. The D, E, and F block voluntary negotiation period will commence January 30, 1997, when long forms are filed. The Commission therefore amends the rules and shortens the voluntary negotiation period for the D, E, and F blocks by one year for non-public safety incumbents.

7. The Commission concludes that shortening the voluntary negotiation period for non-public safety incumbents in the D, E, and F blocks at this juncture will not adversely affect such incumbents. The Commission notes that microwave incumbents have been on notice since October 1992 that they will be required to relocate to alternative spectrum. Moreover, the Commission's experience with voluntary negotiations in the A and B blocks indicates that most incumbents who are motivated to enter into voluntary agreements are willing to do so early in the voluntary period and do not require prolonged negotiations to reach an agreement. Under the timetables adopted here, D, E, and F block incumbents will continue to have a reasonable window for voluntary negotiations and may continue to negotiate in the mandatory negotiation period. Moreover, if parties are successfully negotiating an agreement during the voluntary negotiation period and believe that more time is needed, they may agree to postpone commencement of the mandatory period. Finally, shortening of the voluntary period does not alter the Commission's fundamental policy that incumbents must be made whole for the reasonable expense of being relocated to comparable facilities, regardless of whether relocation occurs in the voluntary period, the mandatory period, or as a result of involuntary relocation.

8. While the Commission adopts it's proposal to shorten the voluntary negotiation period for non-public safety incumbents in the D, E, and F blocks, the Commission concludes it is unnecessary to lengthen the one-year mandatory negotiation period. Because the D, E, and F blocks are 10 MHz blocks, there are fewer links to relocate than in the 30 MHz A, B, and C blocks. In addition, no additional time should be required for mandatory negotiation in the D, E, and F blocks because many of the links will have been relocated by A, B, and C block licensees by the time the D, E, and F block licensees commence negotiations. The Commission is encouraged, from our discussions with industry, by the speed with which relocation agreements are being negotiated and believe that a total of two years, (one year voluntary and one year mandatory) is sufficient to accommodate negotiations between non-public safety incumbents and D, E, and F block licensees. Lengthening the mandatory negotiation period by one year, on the other hand, will do little to accomplish the Commission's objective of speeding the deployment of PCS services to the public. The Commission also do not believe that non-public safety incumbents will be harmed by a shorter combined negotiation period because in conjunction with these changes, the Commission is providing microwave incumbents more flexibility to self-relocate by permitting them to participate in the Commission's cost-sharing plan (see, *infra*, ¶ 22). Consequently, the Commission declines to increase the amount of time in the mandatory period needed to complete the relocation process for these blocks.

9. The Commission declines to alter the voluntary or mandatory negotiation periods for public safety incumbents in the D, E, and F blocks. Under the Commission's current rules, public safety incumbents in the 2 GHz band are distinguished from non-public safety 2 GHz incumbents in that they have a three-year voluntary and a two-year mandatory negotiation period. The Commission has given public safety incumbents more time to negotiate and relocate because of the importance of ensuring a seamless transition for facilities that support vital emergency services such as police, fire, and emergency medical treatment. In addition, the longer negotiation timetable reflects the fact that public safety agencies typically operate under

greater budgetary constraints and longer planning cycles than non-public safety entities. For example, the LA Sheriff's Department notes that replacing its 2 GHz simulcast mobile network entails a lengthy review and approval process in which numerous county personnel must participate at all stages. APCO contends that for public safety agencies, the relocation process requires significant commitment of scarce agency time and resources to ensure that vital emergency communications will not be compromised or disrupted. The Commission agrees that these continue to be significant concerns that distinguish public safety incumbents from other incumbents. The Commission further concludes that there is insufficient support in the record for modifying the negotiation timetable for public safety incumbents at this time. Even prior to the commencement of negotiations, many public safety agencies have begun to plan for relocation in reliance on the existing rules. Because changing the rules could disrupt this process, and because of the vital importance of providing the public with reliable emergency communications, the Commission concludes that the current relocation timetable for public safety agencies in the D, E, and F blocks should be retained.

10. The Commission does not believe that retaining the current relocation rules for public safety incumbents will adversely affect PCS licensees in the D, E, and F blocks. Because public safety incumbents account for fewer than 20 percent of the microwave facilities in all PCS blocks, PCS licensees will be able to clear most of their spectrum under the shorter timetable applicable to non-public safety licensees. In addition, the Commission's experience after twenty-one months of voluntary negotiations in the A and B blocks indicates that most public safety incumbents in those blocks have entered into voluntary negotiations with PCS licensees and are cooperating in the relocation process. Based on this experience, the Commission anticipates that public safety agencies in the D, E, and F blocks will not wait until the conclusion of the voluntary period to begin negotiations requested by D, E, and F block licensees and will make good-faith efforts to complete the relocation process in a reasonable time. Because the Commission believes that the current rules fairly balance the interests of PCS licensees and public safety incumbents, the Commission concludes that further alteration to the voluntary or mandatory negotiation periods for public safety incumbents is unnecessary.

B. Voluntary and Mandatory Negotiation Periods for C Block

11. The C block winners are potentially at a greater disadvantage compared to A and B block winners under the current voluntary negotiation timetable. Currently the voluntary negotiation period for non-public safety incumbents and A and B block licensees will expire April 5, 1997, whereas the equivalent voluntary negotiation period for C block will expire May 22, 1998. The C block winners are small businesses that do not have financial resources similar to their A and B block competitors. The C block is an entrepreneurs block that restricted eligibility to applicants with gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicants' short-form application (Form 175) was filed. It is not as feasible for a small business to pay premiums to accelerate negotiations. The purpose of the special C block bidding rules is to encourage small business participation in PCS. The Commission believes an extended voluntary negotiation period could hinder or deter small businesses from effectively participating in the PCS business because it increases the likelihood that they will incur start-up business expenses such as relocation premiums and related costs due to extended negotiations. The Communications Act requires the Commission to eliminate market entry barriers for entrepreneurs and small businesses. The Commission believes that modifying the negotiation periods will eliminate market entry barriers pursuant to Section 257 of the Communications Act and will assist small businesses in C block to deploy service to the consumer faster. The Commission concludes that these factors are sufficiently compelling to justify modification of the voluntary negotiation period for non-public safety incumbents, even though negotiations have commenced. The Commission therefore shortens the voluntary negotiation period for C block to one year for non-public safety incumbents, which will cause it to terminate on May 22, 1997.

12. Similar to the Commission's decision not to extend the mandatory negotiation period in the D, E, and F blocks, the Commission also conclude that it is unnecessary to extend the mandatory negotiation period for non-public safety incumbents in the C block. As in the case of the D, E, and F blocks, the Commission believe that no additional time is required for mandatory negotiations in the C block because many C block links will have been relocated by A and B block licensees by the time C block licensees commence mandatory negotiations. The Commission also believes that a combined two-year negotiation period will be sufficient for negotiations between C block licensees and non-public safety incumbents, whereas lengthening the mandatory period by one year could delay the deployment of PCS services to the public. Also, microwave incumbents will have greater flexibility in the relocation process because the Commission is permitting them to participate in the Commission's cost-sharing plan (see, *infra*, ¶ 22). In addition, by retaining the one-year mandatory negotiation period for C block, the Commission achieves greater symmetry with the negotiations period for A and B blocks: the earliest that the mandatory negotiation period for C block will expire is now May 22, 1998 for non-public safety incumbents—approximately the same time as the A and B block mandatory negotiation periods, which in most cases should expire April 5, 1998. This will create greater parity between C block entrepreneurs and their A and B block competitors in terms of clearing the band and offering service to the public.

13. The Commission declines to alter the voluntary or mandatory negotiation periods for public safety incumbents in the C block for the same reasons the Commission has articulated for the D, E, and F blocks. As modified, the voluntary negotiation period for the C block will expire on May 22, 1997 for non-public safety incumbents—approximately the same time as the A and B block voluntary negotiation periods, which end April 5, 1997. The voluntary negotiation period for public safety incumbents in the C block will remain unchanged and will end May 22, 1999—approximately one year after the voluntary negotiation period for public safety incumbents in the A and B block voluntary negotiation periods end, which is April 5, 1998.

C. Microwave Incumbent Participation in Cost-Sharing Plan

14. The Commission adopts it's tentative conclusion from the Further Notice of Proposed Rule Making, to permit microwave incumbents that relocate themselves to obtain reimbursement rights and collect reimbursement under the Commission's cost-sharing plan from subsequent PCS licensees that would have interfered with the relocated link had it not been

moved. The Commission agrees with PCS licensees and microwave incumbents who argue that incumbent participation will accelerate the relocation process by promoting system-wide relocations. Incumbent participation will also give microwave incumbents the option of avoiding time-consuming negotiations, allowing for faster clearing of the 2 GHz band in some instances. The Commission believes that promoting system-wide relocation in this way may even reduce the overall cost of clearing the 2 GHz band.

15. In concluding that microwave incumbents should be allowed to participate in cost-sharing, the Commission agrees with commenters that some safeguards are needed to ensure that voluntarily relocating microwave incumbents do not seek reimbursement for unreasonable expenses. The Commission therefore will impose the same restrictions on reimbursement of incumbents that apply to PCS licensees. These include the limitations under the cost-sharing plan on links for which reimbursement may be sought, and the monetary cap on the amount a relocator may be reimbursed for the relocation of each individual microwave link.

16. The Commission also concludes that the cost-sharing formula, when applied to microwave incumbents, should include depreciation. First, a microwave incumbent who voluntarily relocates itself may obtain benefits it would not realize if it waited to be relocated by a PCS licensee. Early relocation by the incumbent on a voluntary basis provides more options for obtaining alternative spectrum, more control over the relocation process, and reduces uncertainty about further operations. Depreciation ensures that the self-relocation pays for these benefits rather than passing them on to a PCS licensee who otherwise would not have relocated the incumbent until later. Second, the Commission observed in the First Report and Order that depreciation creates an incentive for the relocator to minimize costs because its own share of the cost is not depreciated. The Commission concludes that this element of the cost-sharing plan applies equally to microwave incumbents who relocate themselves. Therefore, the Commission retains depreciation as an incentive for microwave incumbents who relocate themselves to minimize their relocation costs.

17. Finally, the Commission concludes that microwave incumbents who self-relocate should be required to provide independent verification of their relocation costs. Although the cost-sharing plan already requires all relocators to keep documents of all expenses, the Commission believe this additional safeguard is appropriate in the case of incumbents seeking reimbursement. In the case of an incumbent who self-relocates, it may be difficult for subsequent PCS licensees to verify the incumbent's costs to determine whether they are compensable under the cost-sharing plan. Therefore, any incumbent seeking reimbursement under the cost-sharing plan must submit to the clearinghouse an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities, and should exclude the cost of any equipment upgrades that would not be reimbursable under the cost-sharing plan.

III. Conclusion

18.The changes the Commission makes to the timetables for the voluntary and mandatory negotiation periods for the broadband PCS C, D, E, and F blocks will facilitate negotiations between microwave incumbents and PCS licensees. Allowing microwave incumbents to participate in the cost-sharing plan will also encourage more rapid system relocation and will reduce relocation costs. As a result of these changes, PCS licensees will be able to speed their deployment of service to the public.

IV. Procedural Matters

A. Regulatory Flexibility Act

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in WT Docket No. 95–157. The Commission sought written comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

Need for and Purpose of the Action: This Second Report and Order (i) shortens the voluntary negotiation period for all non-public safety microwave incumbents in the C, D, E, and F blocks by one year, (ii) allows the microwave incumbents who self-relocate to obtain reimbursement rights and collect reimbursement under the cost-sharing formula. The changes adopted herein will facilitate the rapid relocation of microwave facilities in the 2 GHz band and will accelerate the deployment of PCS services to the public.

Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: No comments were submitted in response to the IRFA. However, two commenters to the Further Notice of Proposed Rule Making, raised an issue that might affect small business entities. The commenters, American Petroleum Institute (API) and the American Public Power Association (APPA) argued that shortening the voluntary negotiation periods would disrupt and impose a significant burden on microwave incumbent businesses by forcing them to negotiate an agreement during a shorter voluntary negotiation period. Both commenters believe that without a two-year voluntary negotiation period, incumbents will be forced to negotiate during the mandatory negotiation period. The Commission does not believe that successful negotiations will be forced into the mandatory negotiation period. If successful negotiations are occurring, parties may agree not to commence with the mandatory negotiation period and may continue to negotiate successfully throughout a voluntary negotiation period.

Description and Estimate of the Number of Small Entities To Which Rule Will Apply: For purposes of this Order, the Small Business Administration (SBA) has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

Estimates for Broadband PCS Services: The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined small businesses in the C and F block auctions to mean a firm that had average gross revenues of less than $40 million in the three previous calendar years. The Commission's definition of a small business has been approved by the SBA.

The Commission has auctioned broadband PCS licenses in the A, B, C, D, E, and F blocks. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in the A and B blocks. There are 81 non-defaulting winning bidders that qualify as small entities in the C block PCS auctions. Based on this information, the Commission conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at

a minimum, the 81 non-defaulting winning bidders that qualified as small entities in the C block broadband PCS auction.

The D, E, and F block auction closed January 14, 1997, but presently there have been no licenses awarded for the D, E, and F block auctions. Therefore, there are no small businesses providing these services. However, there were 125 winning bidders and the Commission anticipates a total of 1,479 licenses will be awarded in the D, E, and F blocks. Participation in the F block was limited to entrepreneurs with under $125 million in average gross revenues over the past three years. More than 40 percent of the licenses in the D, E, and F blocks were won by 93 small businesses. The Commission estimate that most, if not all, of the small businesses will be awarded licenses.

Estimates for Microwave Services: Due to the nature of this private service, the Commission does not have a definition for small business with respect to microwave services. Therefore, the Commission will utilize the SBA's definition applicable to radiotelephone companies—*i.e.* an entity with less than 1,500 persons. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. Also, the Federal Communication Commission's Office of Engineering and Technology developed a study in 1992 that provides statistical data for all microwave incumbents in 1850 MHz to 1990 MHz bands. Specifically, the study finds that in the 1850 MHz to 1990 MHz, local governments, including public safety entities have 168 licensees; petroleum companies have 67 licenses; power companies have 164 licenses; railroad companies have 18 licenses; and all other microwave incumbents in this band have 143 licenses. However, the Commission does not have specific statistics that determine how many of these companies are small businesses. In addition, this Second Report and Order only affects microwave incumbents in PCS blocks C, D, E, and F. Therefore, this Second Report and Order does not affect all microwave incumbents in the 1850 MHz to 1990 MHz band.

However, the Commission recognizes that a number of microwave incumbents have already relocated due to the current negotiations of A, B, and C block PCS licensees. The Commission cannot determine at this time how many licensees have moved. The Commission therefore is unable to estimate the number of microwave service providers that qualify under the SBA's definition.

Description, Projected Reporting, Record keeping and Other Compliance Requirements: In this Second Report and Order the Commission allows microwave incumbents who voluntarily relocate their links to obtain reimbursement from subsequent PCS licensees under the cost-sharing plan. Microwave incumbents that participate in the cost-sharing plan will be required to submit documentation itemizing the amount spent for the actual cost of relocating the links. The voluntarily relocating microwave incumbent will also be required to submit an independent third party appraisal of its compensable costs. See, *supra*, IV., C, paragraph 27.

Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives: In the Further Notice of Proposed Rule Making the Commission sought comment on adjusting the negotiation periods for the D, E, and F blocks by shortening the voluntary negotiation period and lengthening the mandatory negotiation period by the corresponding amount. The Commission also sought comment on whether the same adjustments should be made in the C block. This Second Report and Order shortens the voluntary negotiation period for the C, D, E, and F blocks by one year and lengthens the mandatory negotiation period for C block by one year. The Commission did not lengthen the mandatory negotiation period for the D, E, and F blocks because these are 10 MHz blocks and have fewer links to relocate than in the 30 MHz blocks that C block has. These alterations were made to diminish the opportunity of a few incumbents that were delaying negotiations by demanding excessive premiums from PCS licensees during the voluntary negotiation periods.

Commenters to the Further NPRM generally indicated that microwave incumbents were negotiating successfully during the voluntary negotiation period and did not require prolonged negotiations to reach agreement. The Commission believes that these changes do not affect an incumbent's ability to negotiate an agreement during the voluntary negotiation period. If parties are successfully negotiating an agreement during the voluntary negotiation period, they may agree that more time is needed, thereby agreeing to postpone the commencement of the mandatory negotiation period. See, supra, IV., A, paragraph 13.

These alterations will accelerate the deployment of PCS services to the consumer and still guarantee microwave incumbents full compensation for relocating.

Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this Second Report and Order in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Regulatory Flexibility Analysis will also be published in the Federal Register.

B. Authority

Authority for issuance of this Second Report and Order is contained in the Communications Act, Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332, 47 U.S.C. 154(i), 157, 303(c), 303(f), 303(g), 303(r), 332, as amended.

C. Ordering Clauses

Accordingly, *it is ordered* That Parts 24 and 101 of the Commission's rules are amended as set forth below and will become effective May 19, 1997.

It is further ordered That the Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, and as set forth herein is *Adopted.*

It is further ordered That the Secretary shall send a copy of this Second Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

D. Further Information

For further information concerning this proceeding, contact Michael Hamra, Wireless Telecommunications Bureau, Commercial Wireless Division at (202) 418–0620.

List of Subjects

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 101

Fixed microwave services, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Parts 24 and 101 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.5 is amended by adding the definition for ''Voluntarily Relocating Microwave Incumbent'' in alphabetical order to read as follows:

§ 24.5 Terms and definitions.

* * * * *

Voluntarily Relocating Microwave Incumbent. A microwave incumbent that voluntarily relocates its licensed facilities to other media or fixed channels.

3. Section 24.239 is revised to read as follows:

§ 24.239 Cost-sharing requirements for broadband PCS.

Frequencies in the 1850–1990 MHz band listed in § 101.147(c) of this chapter have been allocated for use by PCS. In accordance with procedures specified in §§ 101.69 through 101.81 of this chapter, PCS entities (both licensed and unlicensed) are required to relocate the existing Fixed Microwave Services (FMS) licensees in these bands if interference to the existing FMS operations would occur. All PCS entities who benefit from spectrum clearance by other PCS entities or a voluntarily relocating microwave incumbent, must contribute to such relocation costs. PCS entities may satisfy this requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 24.243. However, PCS entities are required to reimburse other PCS entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in § 24.241) from PCS entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of microwave relocation specified in § 101.69 of this chapter.

4. Section 24.243 is revised to read as follows:

§ 24.243 The cost-sharing formula.

A PCS relocator who relocates an interfering microwave link, *i.e.* one that is in all or part of its market area and in all or part of its frequency band or a voluntarily relocating microwave incumbent, is entitled to *pro rata* reimbursement based on the following formula:

$$RN = \frac{C}{N} \times \frac{\left[120 - \left(T_m\right)\right]}{120}$$

(a) *RN* equals the amount of reimbursement.

(b) *C* equals the actual cost of relocating the link. Actual relocation costs include, but are not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under § 101.103(d) of this chapter; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities. C also includes voluntarily relocating microwave incumbent's independent third party appraisal of its compensable relocation costs and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the ''hard'' costs involved. C may not exceed $250,000 per link, with an additional $150,000 permitted if a new or modified tower is required.

(c) *N* equals the number of PCS entities that would have interfered with the link. For the PCS relocator, N = 1. For the next PCS entity that would have interfered with the link, N=2, and so on.

(d) *Tm* equals the number of months that have elapsed between the month the PCS relocator obtains reimbursement rights and the month that the clearinghouse notifies a later-entrant of its reimbursement obligation. A PCS relocator obtains reimbursement rights on the date that it signs a relocation agreement with a microwave incumbent.

5. Section 24.245 is amended by revising paragraphs (a) and (b) to read as follows:

§ 24.245 Reimbursement under the cost-sharing plan.

(a) *Registration of reimbursement rights.* (1) To obtain reimbursement, a PCS relocator must submit documentation of the relocation agreement to the clearinghouse within ten business days of the date a relocation agreement is signed with an incumbent.

(2) To obtain reimbursement, a voluntarily relocating microwave incumbent must submit documentation of the relocation to the clearinghouse within ten business days of the date that relocation occurs.

(b) *Documentation of expenses.* Once relocation occurs, the PCS relocator or the voluntarily relocating microwave incumbent, must submit documentation itemizing the amount spent for items listed in § 24.243(b). The voluntarily relocating microwave incumbent, must also submit an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades or items outside the scope of § 24.243(b). The PCS relocator or the voluntarily relocating microwave incumbent, must identify the particular link associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous links). If a PCS relocator pays a microwave incumbent a monetary sum to relocate its own facilities, the PCS relocator must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in § 24.243(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement. A PCS relocator may submit receipts or other documentation to the clearinghouse for all relocation expenses incurred since April 5, 1995.

* * * * *

6. Section 24.247 is amended by revising the introductory text of paragraph (a) to read as follow:

§ 24.247 Triggering a reimbursement obligation.

(a) *Licensed PCS.* The clearinghouse will apply the following test to determine if a PCS entity preparing to initiate operations must pay a PCS relocator or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 24.243:

* * * * *

7. Section 24.249 is amended by revising paragraph (a) to read as follows:

§ 24.249 Payment issues.

(a) *Timing.* On the day that a PCS entity files its prior coordination notice (PCN) in accordance with § 101.103(d) of this chapter, it must file a copy of the PCN with the clearinghouse. The clearinghouse will determine if any reimbursement obligation exists and notify the PCS entity in writing of its repayment obligation, if any. When the PCS entity receives a written copy of such obligation, it must pay directly to the PCS relocator or the voluntarily relocating microwave incumbent the

amount owed within thirty days, with the exception of those businesses that qualify for installment payments. A business that qualifies for an installment payment plan must make its first installment payment within thirty days of notice from the clearinghouse. UTAM's first payment will be due thirty days after its reimbursement obligation is triggered as described in § 24.247(b).

* * * * *

PART 101—FIXED MICROWAVE SERVICES

8. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, unless otherwise noted.

9. Section 101.69 is revised to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

Fixed Microwave Services (FMS) frequencies in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands listed in §§ 101.147(c), (d) and (e) have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would:

(1) Relocate their operations to other fixed microwave bands or other media; or alternatively

(2) Accept a sharing arrangement with the ET licensee that may result in an otherwise impermissible level of interference to the FMS operations.

(b) Except as provided in paragraph (c) of this section, FMS operations in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, with the exception of public safety facilities defined in § 101.77, will continue to be co-primary with other users of this spectrum until two years after the FCC commences acceptance of applications for ET services (voluntary negotiation period), and until one year after an ET licensee initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). In the 1910–1930 MHz band allocated for unlicensed PCS, FMS operations will continue to be co-primary until one year after UTAM, Inc. initiates negotiations for relocation of the fixed microwave licensee's operations. Except as provided in paragraph (c) of this section, public safety facilities defined in § 101.77 will continue to be co-primary in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). If no agreement is reached during either the voluntary or mandatory negotiation periods, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of § 101.75.

(c) Voluntary and mandatory negotiation periods for PCS C, D, E, and F blocks are defined as follows:

(1) Non-public safety incumbents will have a one-year voluntary negotiation period and a one-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year voluntary negotiation period and a two-year mandatory negotiation period.

10. Section 101.71 is revised to read as follows:

§ 101.71 Voluntary negotiations.

During the voluntary negotiation period, negotiations are strictly voluntary and are not defined by any parameters. However, if the parties have not reached an agreement within one year after the commencement of the voluntary period for non-public safety entities, or within three years after the commencement of the voluntary period for public safety entities, the FMS licensee must allow the ET licensee if it so chooses to gain access to the existing facilities to be relocated so that an independent third party can examine the FMS licensee's 2 GHz system and prepare an estimate of the cost and the time needed to relocate the FMS licensee to comparable facilities. The ET licensee must pay for any such estimate.

11. Section 101.73 is amended by revising paragraph (a) to read as follows:

§ 101.73 Mandatory negotiations.

(a) If a relocation agreement is not reached during the voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired.

* * * * *

12. Section 101.77 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.77 Public safety licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) Public safety facilities are subject to the three-year voluntary and two-year mandatory negotiation period, except as otherwise defined in paragraph 101.69(c). In order for public safety licensees to qualify for extended negotiation periods, the department head responsible for system oversight must certify to the ET licensee requesting relocation that:

(1) The agency is a licensee in the Police Radio, Fire Radio, Emergency Medical, Special Emergency Radio Services, or that it is a licensee of other part 101 facilities licensed on a primary basis under the eligibility requirements of part 90, subparts B and C; and

(2) The majority of communications carried on the facilities at issue involve safety of life and property.

* * * * *

13. Section 101.79 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2150–2160 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years after the voluntary period begins for the first ET licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F of any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the

Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

* * * * *

14. Section 101.81 is amended by revising the section heading and the introductory paragraph to read as follows:

§ 101.81 Future licensing in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

After April 25, 1996, all major modifications and extensions to existing FMS systems in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands will be authorized on a secondary basis to ET systems. All other modifications will render the modified FMS license secondary to ET operations, unless the incumbent affirmatively justifies primary status and the incumbent FMS licensee establishes that the modification would add to the relocation costs of ET licensees. Incumbent FMS licensees will maintain primary status for the following technical changes:

* * * * *

[FR Doc. 97–6751 Filed 3–17–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 961217359–7050–02; I.D. 121196B]

RIN 0648–AJ11

Pacific Halibut Fisheries; Catch Sharing Plans

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

ACTION: Annual management measures and approval of catch sharing plans.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces the approval of modifications to the Catch Sharing Plan for Area 2A, and implementing regulations for 1997. These actions are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 15, 1997.

ADDRESSES: NMFS Alaska Region, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802–1668; or NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6143 or Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IPHC has promulgated regulations governing the Pacific halibut fishery in 1997, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Pursuant to regulations at 50 CFR section 300.62, the approved IPHC regulations setting forth the 1997 IPHC annual management measures are published in the Federal Register to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements.

The IPHC held its annual meeting on January 27–30, 1997, in Victoria, British Columbia, and adopted regulations for 1997. The substantive changes to the previous IPHC regulations (61 FR 11337, March 20, 1996) include: (1) New catch limits for all areas; (2) elimination of the commercial IPHC license requirement for U.S. vessels fishing in Alaska; (3) allowance for possessing halibut from multiple fishing areas onboard the vessel under specified conditions; (4) elimination of the requirement to maintain halibut log information separate from other records onboard the vessel; and (5) opening dates for the Area 2A commercial directed fishery.

In addition, this action implements Catch Sharing Plans (Plans) for regulatory Areas 2A and 4. These Plans were developed respectively by the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention (Convention) between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the PFMC and NPFMC to allocate halibut catches should such allocation be necessary.

Catch Sharing Plan for Area 2A

The PFMC has prepared annual Plans since 1988 to allocate the halibut catch limit for Area 2A among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in and off Washington, Oregon, and California. In 1995, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, March 20, 1995), which was revised in 1996 (61 FR 11337, March 20, 1996). The Plan allocates 35 percent of the Area 2A total allowable catch (TAC) to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into 3 shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into 2 sectors; a directed (traditional longline) commercial fishery that is allocated 85 percent of the non-Indian commercial harvest, and 15 percent for harvests of halibut caught incidental to the salmon troll fishery. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°5′18″ N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

For 1997, PFMC recommended changes to the Plan to restructure the May and August seasons in the Oregon Central Coast subarea sport fishery (Cape Falcon to Florence north jetty) from a quota managed to a fixed-length season fishery. A complete description of the PFMC recommended changes to the Plan and implementing regulations was published in the Federal Register on January 3, 1997 (62 FR 382) with a request for public comments. No comments were received on the proposed changes to the Plan, and

NMFS hereby approves the changes to the Plan.

The Plan for the Oregon sport fisheries is modified to read as follows:

Oregon Central Coast Subarea

If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°0′08″ N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide two fixed-length periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed-length seasons will be established preseason for the May and August openings and will not be modified inseason. The average catch per day observed in the previous 3 years in May and August will be used to estimate the number of open days for each fixed season. ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient catch remains for an additional day of fishing after the May season or the August season, openings will be provided in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the subquotas from earlier seasons will be added to the next season. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-inch (81.3-cm) size limit and the second with a minimum 50-inch (127.0 cm) size limit. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the opening dates for each season each year. The three seasons for this subarea are as follows.

1. The first season is an all-depth fishery that begins in mid-May and is allocated 68 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this first season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be open 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be open 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

2. The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues daily until 7 percent of the subarea quota is taken, or until early August, whichever is earlier.

3. The last season is a coastwide (Cape Falcon to Oregon/California border) all-depth fishery that begins in early August and is allocated 25 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon subarea quotas south of Cape Falcon. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if quota remains unharvested. The fishery will be open 2 days per week (Friday and Saturday).

Oregon South Coast Subarea

If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) to the California border (42°00′00″ N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation, which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central Coast subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar crossing conditions very often do not allow scheduled fishing trips. The first and second seasons will be managed for a quota, and a fixed-length season will be established preseason for the August coastwide season (Cape Falcon to Oregon/California border). The average catch per day observed in the previous 3 years fisheries in August will be used to estimate the number of days for the fixed season. Additional open dates may be allowed after the August fixed-length season if sufficient quota remains for an additional day of fishing. Potential additional open dates will be announced preseason. If a decision is made inseason to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the subquotas from earlier seasons will be added to the next season. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-inch (81.3 cm) size limit and the second with a minimum 50-inch (127.0 cm) size limit. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the opening dates for each season each year. The three seasons for this subarea are as follows:

1. The first season is an all-depth fishery that begins in May and continues at least 3 days per week (dependent on TAC) until 80 percent of the subarea quota is taken.

2. The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues daily until the subarea quota is estimated to have been taken, or early August, whichever is earlier.

3. The last season is a coastwide (Cape Falcon to Oregon/California border) all-depth fishery that begins in early August. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon subarea quotas south of Cape Falcon. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if quota remains unharvested. The fishery will be open 2 days per week (Friday and Saturday).

Copies of the complete Plan for Area 2A as modified are available from the NMFS Northwest Regional Office (see **ADDRESSES**).

In accordance with the Plan, the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) held public workshops (after the IPHC set the Area 2A quota) on February 3 and 4, 1997, respectively, to develop recommendations on the opening dates and weekly structure of the sport fisheries. ODFW and WDFW sent NMFS a letter on February 7 and 11, 1997, respectively, advising on the outcome of the workshop and provided recommendations on the opening dates and season structure for the sport fisheries in the Washington inside waters area, the Washington north coast area, the Oregon central coast area, and the Oregon south coast area. The seasonal structuring of the sport fisheries in other areas are stipulated in the Plan. NMFS has approved the recommended opening dates and season structuring provided by ODFW and WDFW and implemented the sport fishery structuring established in the Plan for 1997 as described herein.

Catch Sharing Plan for Area 4

The NPFMC developed a Plan in 1996 for allocating the Area 4 catch limit established by the IPHC among subareas 4A, 4B, 4C, 4D, and 4E. This Plan was adopted by the Secretary and first implemented in 1996 (61 FR 11337, March 20, 1996) and remains in effect until amended by action of the NPFMC. No changes were recommended by the Council for 1997. The 1997 catch limits established by the IPHC for the Area 4 subareas, and published at section 10 of the following regulations, are consistent with the Plan.

The 1997 Pacific halibut fishery regulations are identical to those recommended by the IPHC and approved by the Secretary of State as follows.

1997 Pacific Halibut Fishery Regulations

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Interpretation

(1) In these Regulations,

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), and the United States Coast Guard (USCG);

(b) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(c) *Commercial fishing* means fishing the resulting catch of which either is or is intended to be sold or bartered;

(d) *Commission* means the International Pacific Halibut Commission;

(e) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(f) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(g) *Fishing period limit* means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(h) *Land*, with respect to halibut, means the offloading of halibut from the catching vessel;

(i) License means a halibut fishing license issued by the Commission pursuant to section 3;

(j) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

(k) *Operator*, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(l) *Overall length* of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(m) *Person* includes an individual, corporation, firm, or association;

(n) *Regulatory area* means an area referred to in section 6;

(o) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(p) *Sport fishing* means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing;

(q) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(3) In these Regulations all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

3. Licensing Vessels

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid only for either the directed commercial fishery during the fishing periods specified in paragraph (2) of section 7 or the incidental catch fishery during the salmon troll fishery specified in paragraph (3) of section 7, but not both.

(4) No person shall fish for halibut from a vessel used as a charter vessel, nor possess halibut on board such vessel, unless the Commission has issued a license valid for fishing in Area 2B in respect of that vessel.

(5) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used as a charter vessel in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, unless the Commission has issued a license valid for fishing in those areas in respect of that vessel.

(6) A license issued in respect of a vessel referred to in paragraphs (1), (4), and (5) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(7) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed ''Application for Vessel License for the Halibut Fishery'' form.

(8) A vessel operating in the directed commercial fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 P.M. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(9) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 P.M. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(10) Application forms may be obtained from any authorized officer or from the Commission.

(11) Information on ''Application for Vessel License for the Halibut Fishery'' form must be accurate.

(12) The ''Application for Vessel License for the Halibut Fishery'' form shall be completed and signed by the vessel owner.

(13) Licenses issued under this section shall be valid only during the year in which they are issued.

(14) A new license is required for a vessel that is sold, transferred, renamed, or re-documented.

(15) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(16) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, Code of Federal Regulations, Part 904.

4. Inseason Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(2) Inseason actions may include, but are not limited to, establishment or modification of the following:

(a) Closed areas;

(b) Fishing periods;

(c) Fishing period limits;

(d) Gear restrictions;

(e) Recreational bag limits;

(f) Size limits; or

(g) Vessel clearances.

(3) Inseason changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

5. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(2) Sections 6 to 20 apply to commercial fishing for halibut.

(3) Section 21 applies to the United States treaty Indian tribal fishery in Area 2A–1.

(4) Section 22 applies to sport fishing for halibut.

(5) Sections 23 and 24 apply to fishing in Area 2A.

(6) These regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

6. Regulatory Areas

The following areas shall be regulatory areas for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 9 that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. lat.;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 9 which are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 9, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

7. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 10 have not been taken.

(2) Each fishing period in the Area 2A directed fishery south of 46°53′18″ N. lat. shall begin at 0800 hours and terminate at 1800 hours local time on July 8, July 22, August 5, August 19, September 2, and September 16 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 10, an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the Federal Register. The notice also will specify the ratio of halibut to salmon that may be retained during this fishery.

(4) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 15 and terminate at 1200 hours local time on November 15 unless the Commission specifies otherwise.

(5) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

8. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 7 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 18, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6) of this section, the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved under paragraph (6) of this section.

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

9. Closed Area

(1) All waters in the Bering Sea north of 54°49′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters.

(2) In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.) are closed to the directed commercial halibut fishery.

10. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 7 shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	144,235	65
2B	12,500,000	5,669
2C	10,000,000	4,535
3A	25,000,000	11,338
3B	9,000,000	4,082
4A	2,940,000	1,333
4B	3,480,000	1,578
4C	1,160,000	526
4D	1,160,000	526
4E	260,000	118

(2) Notwithstanding paragraph (1) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate south of 46°53′18″ N. lat. during the fishing periods set out in paragraph 2 of Section 7 and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in paragraph 3 of Section 7. In season actions to transfer catch between these fisheries may occur in conformance with the Catch Sharing Plan for Area 2A.

(a) The catch limit in the directed halibut fishery is 122,600 lb (55.6 mt).

(b) The catch limit in the incidental catch fishery during the salmon troll fishery is 21,635 lb (9.8 mt).

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken and the specific dates during which the directed fishery will be allowed in Area 2A.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will close only when all Individual Fishing Quotas and all Community Development Quotas issued by the National Marine Fisheries Service have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 7, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (3) or (6) of this section the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

11. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon

commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall length	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56–+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 7.

12. Size Limits

(1) No person shall take or possess any halibut that

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the schedule; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the schedule.

(2) No person shall possess on board a vessel a halibut that has been mutilated, or otherwise disfigured in any manner that prevents the determination of whether the halibut complies with the size limits specified in this section, except that:

(a) This paragraph shall not prohibit the possession on board a vessel of halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at Title 50 Code of Federal Regulations, part 679; and

(b) No person shall possess a filleted halibut on board a vessel.

(3) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

13. Careful Release of Halibut

All halibut that are caught and are not retained shall be immediately released and returned to the sea with a minimum of injury by

(a) Hook straightening outboard of the roller;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

14. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the unloading of any halibut caught in any of these areas, unless specifically exempted in paragraphs (9), (12), (13), (14), or (15).

(2) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(5) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(6) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(7) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(8) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(9) Any vessel operator who complies with the requirements in Section 17 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, but must comply with the following requirements:

(a) The operator of the vessel must obtain a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, or Nazan Bay on Atka can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator must obtain a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(11) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(12) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(13) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4D and 4E and lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in section 9, is exempt from the clearance requirements of paragraph (1).

15. Logs

(1) The operator of any vessel that has an overall length of 26 feet (7.9 meters) or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality. The log can be recorded in the groundfish daily fishing logbooks provided by NMFS.

(2) The log referred to in paragraph (1) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for five (5) days following offloading halibut.

(3) The poundage of any halibut that is not sold, but is utilized by the vessel operator,

his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24-hours of offloading.

(4) No person shall make a false entry in a log referred to in this section.

16. Receipt and Possession of Halibut

(1) No person shall receive halibut from a United States vessel that does not have on board the license required by section 3.

(2) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(3) A commercial fish processor who purchases or receives halibut directly from the owner or operator of a vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on State fish tickets or Federal catch reports the date, locality, name of vessel, Halibut Commission license number (United States), the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of IFQs, IVQs, or fishing period limits; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(4) No person shall make a false entry on a State fish ticket or a Federal catch or landing report referred to in paragraph (3).

(5) A copy of the fish tickets or catch reports referred to in paragraph (3) shall be;

(a) retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) open to inspection by an authorized officer or any authorized representative of the Commission.

(6) No person shall possess any halibut that he/she knows to have been taken in contravention of these Regulations.

(7) When halibut are delivered to other than a commercial fish processor the records required by paragraph (3) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (5).

(8) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

17. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in Regulatory Areas 2C, 3A, and 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations published at Title 50 Code of Federal Regulations, section 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel when in compliance with paragraph (3) and if halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

18. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear.

(2) No person shall possess halibut taken with any gear other than hook and line gear.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's name;

(b) The vessel's state license number; or

(c) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

19. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut.

(a) May be retained for personal use; or

(b) May be sold if it complies with the provisions of section 12, Size Limits.

20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

21. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington is governed by these regulations and 50 CFR 300.64.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. lat. and east of 125°44′00″ W. long., and all inland marine waters of Washington.

(3) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear from March 15 through November 15, or until 230,000 pounds (104.3 mt) is taken, whichever occurs first.

(4) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 through December 31, and is estimated to take 15,000 pounds (6.8 mt).

22. Sport Fishing for Halibut

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) In all waters off Alaska.

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(3) In all waters off British Columbia.

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(4) In all waters off California, Oregon, and Washington.

(a) The total allowable catch of halibut shall be limited to 166,530 lb (75.5 mt) in waters off Washington and 144,235 lb (65.4 mt) in waters off Oregon and California;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in Section 23. All sport fishing in Area 2A (except for fish caught in the North Washington coast area and landed into Neah Bay) is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°44′00″ W. long.) to Cape Flattery (48°22′55″ N. lat., 124°43′42″ W. long.), there is no quota. This area is managed by setting a season that is projected to result in a catch of 46,628 lb (21.2 mt).

(A) The fishing season is May 22 through August 10, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31′42″ N. lat.), the quota for landings into ports in this area is 96,088 lb (43.6 mt). Landings into Neah Bay of halibut caught in this area will be governed by this paragraph.

(A) The fishing seasons are:

(*1*) Commencing May 1 and continuing 5 days a week (Tuesday through Saturday) until 81,088 lb (36.8 mt) are estimated to have been taken and the season is closed by the Commission, or until June 30, whichever occurs first.

(*2*) Commencing July 1 and continuing 5 days a week (Tuesday through Saturday) until the overall area quota of 96,088 lb (43.6 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°04′00″ N. lat., 125°11′00″ W. long.; and, 48°04′00″ N. lat., 124°59′00″ W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38′10″ N. lat.), the quota for landings into ports in this area is 20,483 lb (9.3 mt).

(A) The fishing season commences on May 1 and continues every day until 19,483 lb (8.8 mt) are estimated to have been taken and the season is closed by the Commission. Immediately following this closure, the season reopens in the area from the Queets River south to 47°00′00″ N. lat. and east of 124°40′00″ W. long. for 7 days per week until 20,483 lb (9.3 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area west of 124°40′00″ W. long. and north of 47°10′00″ N. lat. is closed to sport fishing for halibut.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46′00″ N. lat.), the quota for landings into ports in this area is 6,215 lb (2.8 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 6,215 lb (2.8 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.), the quota for landings into ports in this area is 127,504 lb (57.8 mt).

(A) The fishing seasons are:

(*1*) The first season is open on May 8, 9, 10, 15, 16, 17, 23 and 24. The projected catch for this season is 86,703 lb (39.3 mt). If sufficient unharvested catch remains for an additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening dates will be June 7, then June 6, then June 14, and then June 13. If a decision is made inseason by NMFS to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline.

(*2*) The second season commences May 25 and continues every day through July 31, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 8,925 lb (4.1 mt) or the subarea quota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) The third season is open on August 1, 2, and 9 or until the combined quotas for the subareas described in paragraphs (v) and (vi) of this section totaling 137,600 lb (62.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. If the harvest during these openings does not achieve the 137,600 lb (62.4 mt) quota, and sufficient unharvested quota remains for additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening dates will be August 23, then August 22, then August 30, and then August 29. If a decision is made inseason by NMFS to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and the California border (42°0′00″ N. lat.), the quota for landings into ports in this area is 10,096 lb (4.6 mt).

(A) The fishing seasons are:

(*1*) The first season opens May 8 and continues 3 days a week (Thursday through Saturday) until 8,077 lb (3.7 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) The second season opens the day following the closure of the season in paragraph (vi)(A)(*1*) of this section, and continuing every day through July 31, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until a total of 2,019 lb (0.9 mt) or the area quota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) The third season is open on August 1, 2, and 9 or until the combined quotas for the subareas described in paragraphs (v) and (vi) of this section totaling 137,600 lb (62.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. If the harvest during these openings does not achieve the 137,600 lb (62.4 mt) quota, and sufficient unharvested quota remains for additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening dates will be August 23, then August 22, then August 30, and then August 29. If a decision is made inseason by NMFS to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vii) In the area off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 3,750 lb (1.7 mt).

(A) The fishing season will commence on May 1, and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(C) The Commission shall determine and announce closing dates to the public for any area in which the subquotas in this Section are estimated to have been taken.

(D) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for

halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(5) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(6) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(7) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(8) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

(9) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(10) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(11) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(12) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(13) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(14) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(15) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(16) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

23. Flexible Inseason Management Provisions in Area 2A

(1) The Regional Director, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after determining that such action:

(A) Is necessary to allow allocation objectives to be met; and

(B) Will not result in exceeding the catch limit established preseason for each area.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(3) Notice procedures.

(A) Actions taken under this section will be published in the Federal Register.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206–526–6667 or 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(A) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Director determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after the action in the Federal Register.

(C) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Director will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Fisheries Management Division, 7600 Sand Point Way NE, Seattle, WA.

24. Fishery Election in Area 2A

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The recreational fishery under Section 22;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 7; or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 7.

(2) No person shall fish for halibut in the recreational fishery in Area 2A under Section 22 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in Section 7 from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 7.

(4) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A or that is licensed for the recreational halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 7 taken on a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A, or that is licensed for the recreational halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 7 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 7 for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in Section 7 in Area 2A.

25. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act (APA) does not apply to this notice of the effectiveness and content of the IPHC regulations. Because notice of proposed rulemaking is not required, the preparation of a regulatory flexibility analysis is not required. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. § 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, are not applicable.

Plan for Area 2A

The revisions to the Plan and implementing regulations are not significant and fall within the scope of the 1995 Environmental Assessment/ Regulatory Impact Review prepared by the PFMC for the long term Plan. The Assistant General Counsel for Legislation and Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. As a result, regulatory flexibility analysis was not prepared. This action has been determined to be not significant for purposes of E.O. 12866.

Authority: 16 U.S.C. 773–773k.

Dated: March 12, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–6755 Filed 3–13–97; 3:16 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 52
Tuesday, March 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–73–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all de Havilland Model DHC–8–100 and –300 series airplanes, that currently requires an inspection to detect discrepancies and damage of the low fuel pressure switch adapter/snubber (located on each engine fuel heater), and replacement, if necessary. That AD also requires an inspection to detect gaps or openings in each nacelle and engine-mounted firewall area, and in certain weather seals in the nacelles; and correction of discrepancies. The proposed AD would require certain new modifications to the nacelles that will minimize the passage of flammable fluid through the zones of the nacelle of each engine. The actions specified by the proposed AD are intended to prevent the spread of fire through these zones in the event of an explosion during flight, and consequent structural damage to the airplane.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7504; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–73–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 15, 1992, the FAA issued AD 92–13–11, amendment 39–8281 (57 FR 37872, August 21, 1992), applicable to all de Havilland Model DHC–8–100 and –300 series airplanes, which requires repetitive inspections to detect discrepancies of the low fuel pressure switch adapter/snubber (located on each engine fuel heater), and replacement of discrepant parts. The installation of de Havilland Modification 8/1208 is provided as an optional terminating action for these repetitive inspections. AD 92–13–11 also requires an inspection for gaps and openings that could allow flammable fluids to pass through the firewall areas of each engine nacelle; an inspection of the presence and condition of weather seals around certain access panels to each nacelle; and the application or reapplication of sealant to discrepant areas. The requirements of that AD are intended to prevent an in-flight explosion and fire within the zones of the nacelle.

Actions Since Issuance of Previous AD

Since the issuance of that AD, the manufacturer has developed several modifications that are intended to correct discrepancies within the nacelle so that an engine fire can be contained within this area. These additional modifications will further minimize the spread of fire through these zones which, if not contained, could cause structural damage to the airplane.

Explanation of Relevant Service Information

Bombardier, the manufacturer of this airplane model, has issued 5 de Havilland Dash 8 service bulletins pertaining to modifications that are intended to prevent the spread of fire through the zones of the nacelle.

1. Service Bulletin S/B No. 8–54–12, dated January 27, 1989, describes procedures for modifying the firewalls of the lower cowlings by installing new angle-gasket assemblies; and applying sealant to gaps and openings in this area. This modification seals areas where latch fittings penetrate the firewalls of the lower cowlings; these areas are potential paths for flammable fluid to travel within the nacelle.

2. Service Bulletin S.B. 8–54–25, Revision 'A,' dated July 29, 1994,

describes procedures for conducting an inspection of the upper access panels of each nacelle for the presence and condition of weather sealing, and application or reapplication of sealant, if necessary. It also describes procedures for conducting an inspection of the firewall areas of each nacelle for gaps and openings at lap joints, between bolts, and at carry-through fittings and grommets; and the application of sealant, if necessary. Furthermore, this service bulletin describes procedures for applying exterior labels on these access panels so that maintenance personnel will be notified of the requirement to apply sealant whenever these panels are re-installed.

3. Service Bulletin S.B. 8–54–30, Revision 'B,' dated February 5, 1993, describes procedures for modifying each nacelle by replacing Camloc receptacles made of silicon bronze with receptacles of stainless steel. The replacement receptacles are able to withstand higher temperatures than those now being used.

4. Service Bulletin S.B. 8–54–31, dated March 8, 1994, describes procedures for conducting another inspection of the firewall areas of each nacelle for gaps and openings after the modification described in Service Bulletin S.B. 8–54–30 has been installed. This service bulletin also describes procedures for applying additional sealant to these areas.

5. Service Bulletin S.B. 8–71–19, Revision 'B,' dated February 24, 1995, describes procedures for replacing the door seals of the cowlings with improved seals.

Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–94–10R1, dated March 7, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–13–11. It would continue to require the actions currently required by that AD, and would add a requirement that the following actions be performed on each engine nacelle:

- Installation of new angle-gasket assemblies on the firewalls of the lower cowlings, and application of sealant to gaps and openings in these areas;
- Inspection of the upper access panels of each nacelle for the presence and condition of weather sealing, and application or reapplication of sealant, if necessary;
- Inspection of the firewall areas for gaps and openings at lap joints, between bolts, and at carry-through fittings and grommets; and the application of sealant, if necessary;
- Modification of the nacelle by replacing Camloc receptacles made of silicon bronze with receptacles of stainless steel;
- Application of additional sealant to the firewall areas after the Camloc receptacles have been replaced; and
- Replacement of the seals on the cowling doors with improved seals.

These actions would be required to be accomplished in accordance with the applicable service bulletins described previously.

Cost Impact

There are approximately 100 de Havilland Model DHC–8–100 and -300 series airplanes of U.S. registry that would be affected by this proposed AD.

Each inspection of the low fuel pressure switch adapter/snubber that is currently required by AD 92–13–11 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $24,000, or $240 per airplane, per inspection.

The inspection for gaps or openings in each nacelle, engine-mounted firewall area, and certain nacelle weather seals that is currently required by AD 92–13–11 takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $72,000, or $720 per airplane.

The installation of new angle-gasket assemblies that is proposed in this new AD would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $12,000, or $120 per airplane.

The inspection of the upper access panels and firewalls of both nacelles, and the application of labels, that is proposed in this new AD would take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $43 per airplane. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $46,300, or $463 per airplane.

The replacement of the Camloc receptacles with improved receptacles that is proposed in this new AD would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $15 per airplane. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $49,500, or $495 per airplane.

The inspection and application of additional sealant to the firewalls of the nacelles that is proposed in this new AD would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is estimated to be minimal. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $24,000, or $240 per airplane.

The replacement of the seals on the cowling doors that is proposed in this new AD would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no cost to operators or would cost $1,270, depending on the kit required. Based on these figures, the cost impact on U.S. operators of this proposed action is estimated to be between $24,000 and $151,000, or between $240 and $1,510 per airplane, depending on the kit required.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8281 (57 FR 37872, August 21, 1992), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 96–NM–73–AD. Supersedes AD 92–13–11, Amendment 39–8281.

Applicability: All Model DHC–8–100 and-300 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the spread of fire through the zones of each nacelle, in the event of an explosion during flight, and consequent structural damage to the airplane, accomplish the following:

Note 2: The requirements of paragraphs (a) and (b) of this AD are restatements of the same paragraphs that appeared in AD 92–13–11, amendment 39–8281. These paragraphs require no additional action by operators who have already completed the specified actions.

(a) For airplanes having serial numbers 3 through 248, inclusive, on which Modification No. 8/1208 has not yet been accomplished, accomplish the following:

(1) Within 30 days after September 8, 1992 (the effective date of AD 92–13–11, amendment 39–8281), remove and inspect the low fuel pressure switch adapter/snubber located on each engine fuel heater for damage to threads, indication of over-torque, and for proper seating, in accordance with the accomplishment instructions of de Havilland Alert Service Bulletin A8–73–14, Revision B, dated April 24, 1992. If the adapter/snubber is damaged or if evidence of over-torque is present, prior to further flight, replace the adapter/snubber with a serviceable part, in accordance with that service bulletin.

(2) Thereafter, at any time in which the low fuel pressure switch adapter/snubber assembly is removed, accomplish the inspection of the assembly as described in paragraph (a)(1) of this AD.

(3) Installation of Modification 8/1208, in accordance with de Havilland Service Bulletin 8–28–15, Revision A, dated April 17, 1992, constitutes terminating action for the inspections required by paragraphs (a)(1) and (a)(2) of this AD.

(b) For all Model DHC–8–100 and –300 series airplanes: Within 30 days after September 8, 1992 (the effective date of AD 92–13–11, amendment 39–8281), accomplish the procedures specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Inspect the nacelle vertical firewall section, firewall extension, and engine mounted firewall (reference: Maintenance Manual section 71–30–00) for gaps and openings that could permit flammable fluid to pass through. Gaps and openings may be found at lap joints, between bolts, and at carry-through fittings and grommets. If gaps are found, prior to further flight, seal the gaps using PR812, Pro-Seal 700, or other approved firewall sealants (reference: Maintenance Manual section 20–21–20). Allow the sealant to cure for at least 4 hours prior to further flight.

(2) Inspect access panels 419AT and 429AT as specified in DHC–8 Maintenance Manual [section 40–10, pages 12 and 14] (reference: Illustrated Parts Catalog 54–30–00, Figure 5, Items 410 and 420) for the presence and condition of the weather seal in the gap between the panels and the adjacent structure. If the gap is not sealed, prior to further flight, seal the panels using PR1422, PR1435, or other sealant specified in the DHC–8 Maintenance Manual, section 20–21–16. A release agent, applied prior to sealing, also may be used as specified in DHC–8 Maintenance Manual, section 20–21–19. Allow the sealant or release agent to cure for at least 4 hours, prior to further flight.

(c) For airplanes having serial numbers 3 through 137, inclusive, on which Modification No. 8/1126 has not been installed: Within 1 year after the effective date of this AD, seal the firewall of the lower cowling of each engine by installing angle-gasket assemblies and applying sealant, in accordance with de Havilland Service Bulletin S/B No. 8–54–12, dated January 27, 1989.

(d) For airplanes having serial numbers 003 through 331, inclusive, on which Modification No. 8/1885 has not been installed: Within 1 year after the effective date of this AD, accomplish the procedures specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD in accordance with de Havilland Service Bulletin S.B. 8–54–25, Revision 'A,' dated July 29, 1994.

(1) Inspect the vertical firewall section, firewall extension, and engine-mounted firewall of the upper structure of each nacelle, including the lap joints between bolts and at carry-through fittings and grommets, to detect gaps and openings through which flammable fluid could pass, in accordance with the service bulletin. If any gap or opening is detected, prior to further flight, seal the gap or opening, in accordance with the service bulletin.

(2) Inspect the upper access panels of each nacelle to detect the presence and condition of sealant in any gap between each panel and its adjacent structure, in accordance with the service bulletin. If there is no sealant or the sealant is discrepant, prior to further flight, apply or replace sealant, as applicable, in accordance with the service bulletin.

(3) Apply exterior labels and protective coatings to each access panel of the left and right nacelle in accordance with the service bulletin.

(e) For airplanes having serial numbers 003 through 332, inclusive, on which Modification No. 8/1887 has not been installed: Within 1 year after the effective date of this AD, replace the Camloc receptacles in each nacelle with stainless steel receptacles, and apply additional sealant to the firewall of each nacelle, in accordance with de Havilland Service Bulletin S.B. 8–54–30, Revision 'B,' dated February 5, 1993.

(f) For airplanes having serial numbers 003 through 357, inclusive, on which Modification No. 8/1996 has not been installed: Within 1 year after the effective date of this AD, inspect the forward and rearward faces of the firewall, firewall extension, and engine mounted firewall of the lower structure of each nacelle for any gap or opening at lap joints, between bolts,

and at carry-through fittings and grommets through which flammable fluid could pass, in accordance with de Havilland Service Bulletin S.B. 8–54–31, dated March 8, 1994. If any gap or opening is detected, prior to further flight, apply sealant in accordance with the service bulletin.

(g) For airplanes having serial numbers 003 through 369, inclusive, on which Modification No. 8/2001 has not been installed: Within 1 year after the effective date of this AD, replace the existing seals on the cowling doors of each nacelle with improved seals, in accordance with de Havilland Service Bulletin S.B. 8–71–19, Revision 'B,' dated February 24, 1995.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

Issued in Renton, Washington, on March 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6718 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 82–20–04 R1, which currently requires repetitively inspecting the main landing gear (MLG) hinge fitting, support angles, and attachment bolts on British Aerospace (currently known as Jetstream Aircraft Limited (JAL)) HP137 Mk1 and Jetstream series 200 airplanes, and repairing or replacing any part that is cracked beyond certain limits. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require installing improved design MLG fittings, as terminating action for the repetitive inspections that are currently required by AD 82–20–04 R1, and would incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD. The actions specified in the proposed AD are intended to prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before June 6, 1997.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2715; facsimile (32 2) 230.6899; or Mr. S.M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–53–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 airplanes. Assisting the FAA in this review were (1) Jetstream Aircraft Limited (JAL); (2) the Regional Airlines Association (RAA); (3) the Civil Aviation Authority

(CAA) for the United Kingdom; and (4) several operators of the affected airplanes.

From this review, the FAA identified AD 82–20–04 R1, Amendment 39–4586, as one to which the FAA's aging aircraft policy applies, and which should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 82–20–04 R1 currently requires repetitively inspecting the main landing gear (MLG) hinge fitting, support angles, and attachment bolts on British Aerospace (currently known as JAL) HP137 Mk1 and Jetstream series 200 airplanes, and repairing or replacing any part that is cracked beyond certain limits.

Relevant Service Information

The following service information is relevant to this subject:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relevant movement between the nuts and hinge fitting on HP137 Mk1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1 ..	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on HP137 Mk1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2 ..	January 6, 1983.
1, 3, and 4	Revision 3 ..	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Model 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue.	April 17, 1985.
1 through 4	Revision 2 ..	November 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218, which includes procedures for installing improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218) on HP137 Mk1, Jetstream series 200, and certain Jetstream Model 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1 ..	September 29, 1987.
25 and 26 ...	Revision 2 ..	August 24, 1988.
10 and 20 ...	Revision 3 ..	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4 ..	October 31, 1990.

The FAA's Determination

Based on its aging commuter-class aircraft policy and after reviewing all available information, including the referenced service information, the FAA has determined that AD action should be taken to (1) require the incorporation of Modification 5218 on the affected airplanes, as terminating action for the repetitive short-interval inspections required by AD 82–20–04 R1; and (2) prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes of the same type design, the FAA is proposing to supersede AD 82–20–04 R1 with a new AD. The proposed AD would (1) retain the requirement of repetitively inspecting the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; (2) incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD; and (3) require the installation of improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections. Accomplishment of the proposed actions would be in accordance with the service bulletins referenced previously.

Differences Between the Proposed AD, CAA for the United Kingdom AD, and Existing AD 82–20–04 R1

AD 82–20–04 R1 allows continued flight if cracks are found in the MLG hinge fitting support angles that propagate no further than the tooling holes. The applicable service bulletin specifies replacement of the support angles only if cracks are found exceeding this limit, as does CAA AD 015–05–85. The proposed AD, if adopted, would not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The main landing gear is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

Cost Impact

The FAA estimates that 71 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 271 workhours (inspections: 61 workhours; installation: 210 workhours) per airplane to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Parts to accomplish the proposed AD are provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,154,460 or $16,260 per airplane. This figure only takes into account the cost of the initial inspections and inspection-terminating modification and does not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplane owner/operator would incur.

This figure is also based on the presumption that no affected airplane operator has accomplished the proposed installation. This action would eliminate the repetitive inspections required by AD 82–20–04 R1. The FAA has no way of determining the operation levels of each individual owner/operator of the affected airplanes, and subsequently cannot determine the repetitive inspection costs that would be eliminated by the proposed action. The

FAA estimates these costs to be substantial over the long term.

In addition, JAL has informed the FAA that parts have been distributed to owners/operators that would equip approximately 39 of the affected airplanes. Presuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed modification upon the public would be reduced $634,140 from $1,154,460 to $520,320.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a ''significant economic impact on a substantial number of small entities,'' and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, defines a small entity as ''a small business or small not-for-profit organization which is independently-owned and operated and has no more than a specified number of employees or aircraft.'' For operators of aircraft for hire (those entities that are affected by 14 CFR parts 121, 127, and 135), the size threshold specified in FAA Order 2100.14A is nine aircraft.

There are only nine different operators of JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. Of these nine, only four operate less than nine airplanes. Because four is a number that is less than 11 and the rulemaking official has not determined this number to be substantial, the proposed AD would not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 82–20–04 R1, Amendment 39–4468, and adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–53–AD. Supersedes 82–20–04 R1, Amendment 39–4468.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), installed in accordance with Jetstream Service Bulletin (SB) 57–JM 5218:

Model	Serial Nos.
HP137 Mk1	All serial numbers.
Jetstream Series 200	All serial numbers.
Jetstream 3101	601 through 695.

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

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings. If the total number of airplane landings is not kept or is unknown, hours time-in-service (TIS) may be used by multiplying the total number of airplane hours TIS by 0.75.

(a) For the HP137 Mk1 and Jetstream series 200 airplanes, within the next 50 landings after the effective date of this AD or within 200 landings after the last inspection required by AD 82–20–04 R1 (superseded by this AD), whichever occurs first, and thereafter at intervals not to exceed 200 landings, accomplish the following in accordance with British Aerospace Mandatory Service Bulletin (MSB) No. 7/5, which incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1 ..	May 23, 1988.

(1) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting.

(2) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found, prior to further flight, resecure the MLG hinge fitting to auxiliary spar in accordance with actions 3.8 through 3.15 of British Aerospace MSB No. 7/5.

(b) Upon accumulating 4,000 landings or within the next 50 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 400 landings, inspect the MLG hinge support angles for cracks in accordance with the following, as applicable:

(1) For the HP137 Mk1 and Jetstream series 200 airplanes: British Aerospace MSB 7/8, which incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2 ..	January 6, 1983.
1, 3, and 4	Revision 3 ..	May 23, 1988.

(2) For the Jetstream Model 3101 airplanes: Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue.	April 17, 1985.
1 through 4	Revision 2 ..	November 11, 1994.

(c) Install improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218). Perform this installation at the compliance time (presented in paragraphs (c)(1) and (c)(2) of this AD) which occurs first. Accomplish this installation in accordance with Jetstream Service Bulletin (SB) 57–JM 5218, which incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1 ..	September 29, 1987.
25 and 26 ...	Revision 2 ..	August 24, 1988.
10 and 20 ...	Revision 3 ..	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4 ..	October 31, 1990.

(1) Prior to further flight after finding any crack during an inspection required by paragraph (b) of this AD; or

(2) Upon accumulating 20,000 landings or within the next 50 landings after the effective date of this AD (whichever occurs later).

(d) Incorporating Modification 5218 as required by paragraph (c) of this AD terminates the repetitive inspection requirement of this AD (paragraphs (a) and (b) of this AD).

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division. Alternative methods of compliance approved in accordance with AD 82–20–04 R1 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

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

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 82–20–04 R1, Amendment 39–4468.

Issued in Kansas City, Missouri, on March 10, 1997.

Michael Gallagher,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–6716 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–ANE–03]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TSCP700–4B and –5 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly AirResearch and Garrett) TSCP700–4B and –5 Series Auxiliary Power Units, that currently requires restretching the first stage low pressure compressor (LPC) tie rods, or replacing affected disks at or before 8,000 cycles since new (CSN). This action would eliminate the option of restretching the tie rods, and would require removing from service affected disks, replacing them with serviceable parts, and establishing a life limit of 8,000 CSN for affected disks. This proposal is prompted by a report of a first stage LPC disk rim separation due to low cycle fatigue on an APU that had its tie rods restretched in accordance with the current AD. The actions specified by the proposed AD are intended to prevent first stage LPC disk rim separation due to low cycle fatigue, which could result in an uncontained APU failure and damage to the aircraft.

DATES: Comments must be received by May 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–03, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–03.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–03, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On October 31, 1988, the Federal Aviation Administration (FAA) issued airworthiness directive AD 88–24–07, Amendment 39–6062 (53 FR 46439, November 17, 1988), applicable to AlliedSignal Inc. (formerly AirResearch and Garrett) TSCP700–4B and –5 series auxiliary power units (APUs), to require restretching the tie rods, or replacing affected disks at or before 8,000 cycles since new (CSN). That action was prompted by reports of compressor tie rod separation in the event of disk rim separation. That condition, if not corrected, could result in compressor tie rod separation in the event of disk rim separation, which could result in an uncontained APU failure and damage to the aircraft.

Since the issuance of that AD, the FAA has received a report that a first stage LPC disk, installed on an APU with restretched tie rods in accordance with AD 88–24–07, experienced an uncontained disk rim separation at 9,408 CSN and caused aircraft damage. The FAA has therefore determined that it is necessary to eliminate the tie rod restretching option and institute the life limit of 8,000 CSN for all affected disks.

The FAA has reviewed and approved the technical contents of AlliedSignal Service Bulletin (SB) No. TSCP700–49–7266, dated June 16, 1996, that describes procedures for calculating when to remove from service affected disks, and describes procedures for removing from service affected disks, and replacing them with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 88–24–07 to eliminate the option of restretching the tie rods, and require removing from service affected disks in accordance with a schedule derived from calculations in the SB, replacing affected disks with serviceable parts, and establishing a life limit of 8,000 CSN for affected disks.

The FAA estimates that 100 APUs installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take no additional work hours per APU to accomplish the proposed actions if the actions are accomplished during APU overhaul, 8 work hours to accomplish the proposed actions if the actions are not accomplished during APU overhaul, and that the average labor rate is $60 per work hour. Based on these figures, and that the work would not be performed during overhaul, the total cost impact of the proposed AD on U.S. operators is estimated to be $48,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6062 (53 FR 46439, November 17, 1988) and by adding a new airworthiness directive to read as follows:

AlliedSignal Inc.: Docket No. 97–ANE–03. Supersedes AD 88–24–07, Amendment 39–6062.

Applicability: AlliedSignal Inc. (formerly AirResearch and Garrett) TSCP700–4B and –5 auxiliary power units (APUs), with first stage low pressure compressor (LPC) disks, Part Number (P/N) 3606429–1, installed on but not limited to Airbus A300 series, and McDonnell Douglas DC–10 and KC–10 (military) series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent first stage LPC disk rim separation due to low cycle fatigue, which could result in an uncontained APU failure and damage to the aircraft, accomplish the following:

(a) Remove from service first stage LPC disks, P/N 3606429–1, in accordance with the schedule derived from calculations in paragraph C.(3) of AlliedSignal Service Bulletin (SB) No. TSCP700–49–7266, dated June 16, 1996, and the removal procedures described in the Accomplishment Instructions of that SB, and replace with serviceable parts.

(b) Except as provided in paragraph (a), this AD establishes a life limit of 8,000 cycles

since new (CSN) for first stage LPC disks, P/N 3606429–1.

(c) The definition of a disk cycle may be found in the applicable AlliedSignal Inc. APU Component Maintenance Manual.

(d) Except as provided in paragraph (e) of this AD, no alternative replacement times may be approved for first stage LPC disks, P/N 3606429–1.

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

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

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

Issued in Burlington, Massachusetts, on February 25, 1997.

James C. Jones,

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

[FR Doc. 97–6745 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–138–FOR; Amendment No. 95–3 II]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; correction.

SUMMARY: OSM is correcting errors in the **SUPPLEMENTARY INFORMATION** section, under *II. Description of the Proposed Amendment,* for a proposed rule announcing receipt of a proposed amendment to the Indiana regulatory program that was published on Tuesday, February 18, 1997 (62 FR 7192).

FOR FURTHER INFORMATION CONTACT: Charles F. McDaniel, Acting Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

II. Description of the Proposed Amendment

On page 7192 of the February 18, 1997, Federal Register, the following corrections are made:

1. In the second column, under *2. 310 IAC 12–3–131 Small Operator Assistance; Eligibility for Assistance,* beginning in the fourth line, the words ''by redesignating subsections (20(A)'' should read ''by redesignating subsections (2)(B) as (2)(A)''.

2. In the third column, under *4. 310 IAC 12–3–132.5 Small Operator Assistance; Application Approval and Notice,* the two paragraphs under this heading were included in the discussion of this proposed regulation revision in error. The following information should have been included in the discussion:

Indiana proposes to clarify the application approval and notice requirements for its small operator assistance program.

3. In the third column, under *5. 310 IAC 12–3–133 Small Operator Assistance; Program Services and Data Requirements,* the following two paragraphs should have been included in the discussion of this proposed regulation revision following the existing text:

Indiana proposes to add new subsection (c) to allow data collection and analysis to proceed concurrently with the development of mining and reclamation plans by the operator.

Indiana proposes to add new subsection (d) to require that data collected under its small operator assistance program be made available to the public and that the program administrator develop procedures for interstate coordination and exchange of data.

Dated: March 10, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–6753 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

[VA–104–FOR]

Virginia Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is opening the public comment period on a proposed amendment to the Virginia Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Virginia Program) under the surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., as amended. In response to comments from OSM and others, the State revised and resubmitted the AMLR plan amendment. The proposed amendment is intended to streamline Virginia's total AMLR plan to be consistent with the Federal regulations.

DATES: Written comments must be received on or before 4:00 p.m. on April 2, 1997.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed AMLR plan amendment (including revisions and supplementary submittals), and all written comments received in response to the proposed amendment will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, Powell Valley Square Shopping Center, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 300 CFR 946.20 and 946.25.

II. Discussion of the Proposed Amendment

By letter received February 29, 1996 (Administrative Record No. VA–871), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed amendment to the Virginia Program. This amendment is intended to revise and streamline Virginia's total AMLR plan to more closely parallel the Federal state reclamation plan information requirements of 30 CFR 884.13.

The proposed revisions to the AMLR plan concern: The purpose of the State reclamation program; ranking and selection; coordination with other programs; land acquisition, management and disposal; reclamation on private land; rights of entry; public participation policies; organization; staffing policies; purchasing and procurement; accounting system; location of known or suspected eligible land and water; description of problems occurring on lands and waters (map); reclamation proposals; economic base; aesthetic, historic or cultural, and recreation values; and endangered and threatened plant, fish, wildlife and habitat. The primary purpose of the amendment is to incorporate the 1990 amendments to SMCRA, and the AMLR provisions of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992).

OSM announced receipt of the proposed amendment in the March 18, 1996, Federal Register (61 FR 10919), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 17, 1996. No hearing was requested, so none was held.

During its review of the amendment, OSM identified concerns relating to various sections of the proposed plan and provided draft comments to the State (Administrative Record Number VA–898). OSM representatives met with DMLR representatives on October 31, 1996, and November 4, 1996, to resolve comments included in the draft list prepared by OSM (Administrative Record Number VA–899).

On November 19, 1996, OSM conducted a telephone conference with DMLR representatives to further resolve issues included in the draft issues list. OSM representatives met with DMLR representatives on November 20, 1996, to continue to resolve issues in the draft issues list. The results of the November 19, 1996, teleconference and the November 20, 1996, meeting, including the changes proposed by the DMLR to be made to the Virginia plan submittal, are documented in the Virginia Administrative Record Number VA–900. In addition, VA–900 contains copies of the forms (Lien Waiver, Right of Entry, Claim of Lien, and AML Complaint Investigation) that the DMLR uses to implement the Virginia program. These forms are considered by OSM to be part of the Virginia plan submittal.

On December 5, 1996, OSM conducted a telephone conference with DMLR representatives to resolve the remaining issues. The results of that telephone conference are documented at Administrative Record Number VA–901.

On December 10, 1996, Virginia submitted draft language to the U.S. Fish and Wildlife Service (USFWS) to address USFWS comments made on April 4, 1996 (Administrative Record Number VA–904).

On January 7, 1997, the USFWS recommended further modifications to the endangered and threatened species section of the proposed AMLR plan amendment wording (Administrative Record Number VA–905).

On February 6, 1997, OSM provided USFWS with Virginia's AMLR plan language that was revised in response to USFWS comments on endangered and threatened species (Administrative Record Number VA–906).

On February 10, 1997 (Administrative Record Number VA–907), OSM met with DMLR to discuss changes made to the AMLR plan amendment by Virginia to address OSM's comments on the amendment that were identified in OSM's draft issues list (Administrative Record Number FA–898).

On February 7, 1997, USFWS confirmed that DMLR's draft wording changes to the endangered and threatened species section of the proposed AMLR plan amendment now includes the modifications proposed by USFWS (Administrative Record Number VA–908).

On February 10, 1997, the U.S. Environmental Protection Agency (EPA) confirmed that draft wording modifications to the proposed Virginia AMLR plan amendment received from DMLR on November 20, 1996, resolve EPA's identified concerns (Administrative Record Number VA–909).

On February 14, 1997, OSM proposed wording changes to DMLR to resolve OSM concerns regarding sentences added to the proposed AMLR plan amendment by DMLR related to remining (Administrative Record Number VA–910).

On February 27, 1997, DMLR agreed to modify AMLR plan wording to resolve OSM concerns regarding sentences added to the proposed AMLR plan amendment by DMLR related to remining (Administrative Record Number VA–911).

By electronic mail correspondence dated March 5, 1997, (Administrative Record Number VA–912), Virginia submitted a revised copy of the proposed AMLR plan that contains the changes made to resolve the issues identified by OSM, the USFWS, and the EPA. The full text of the revised proposed AMLR plan amendment submitted by Virginia is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Virginia program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed

State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–6752 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5710–8]

Clean Air Act Interim Approval of Operating Permits Program; Commonwealth of Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the Commonwealth of Virginia's Operating Permits Program, which Virginia submitted in response to Federal statutory and regulatory directives that States adopt programs providing for the issuance of operating permits to all major stationary sources and to certain other sources. EPA is proposing interim approval of Virginia's submittal because Virginia's program substantially meets the requirements for approval set forth at 40 Code of Federal Regulations (CFR) Part 70, but still requires some revisions to fully meet those requirements. The required revisions which Virginia will have to make before EPA could grant full approval are discussed in this notice.

DATES: Comments on this proposed action must be received in writing by April 17, 1997. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following locations: (1) U.S. EPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107, and (2) Virginia Department of Environmental Quality; 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, 3AT23; U.S. EPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107. (215) 566–2061.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Submittal and Review Requirements

As required under Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (CAA)), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V directs States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The CAA directs States to develop and submit these programs to EPA by November 15, 1993, and requires EPA to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the CAA and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of section 502 of the CAA and Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal program.

Due in part to pending litigation over several aspects of the Part 70 rule promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will redefine EPA's criteria for the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will review State operating permits program submittals. Until the date on which the revisions to Part 70 are promulgated, the currently effective July 21, 1992, version of Part 70 shall be used as the basis for EPA review.

B. Federal Oversight and Potential Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of the final interim approval. During the interim approval period, Virginia would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the Commonwealth. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three year time period for processing the initial permit applications.

Following final interim approval, if Virginia failed to submit a complete

corrective program for full approval by the date six months before expiration of the interim approval, EPA would be required to start an 18 month clock for mandatory sanctions. If Virginia then failed to submit a corrective program that EPA found complete before the expiration of the 18 month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA, which would remain in effect until EPA determined that Virginia had remedied the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of Virginia, both sanctions under section 179(b) would be required to apply after the expiration of the 18 month period until the Administrator determined that Virginia had come into compliance. In any case, if, six months after application of the first sanction, Virginia still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Virginia's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Virginia had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of Virginia, both sanctions under section 179(b) would be required to apply after the expiration of the 18 month period until the Administrator determined that Virginia had come into compliance. In all cases, if, six months after EPA applied the first sanction, Virginia had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Virginia has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to Virginia's program by the expiration of the interim approval, EPA must promulgate, administer and enforce a Federal permits program for Virginia after the interim approval expires.

II. Description of Virginia's Submittal

Virginia submitted an operating permits program to EPA on November 12, 1993, pursuant to the requirements of Title V. The submittal included regulations, an Attorney General's opinion, a program description, permitting program documentation, and other required elements. On January 14, 1994, Virginia submitted a supplemental letter pertaining to enhanced monitoring. EPA disapproved that submittal in a Federal Register notice published on December 5, 1994 (59 FR 62324).

EPA disapproved the submittal because it did not provide citizens with adequate judicial standing to challenge permits, did not prevent the default issuance of permits, did not contain regulations which were still in effect, did not cover the proper universe of sources, did not ensure that permits would include all applicable requirements, and did not correctly delineate permit provisions enforceable only by Virginia. In addition, EPA identified numerous other deficiencies that Virginia would need to correct to meet the federal requirements for a fully approvable program, although these other deficiencies were not bases for the disapproval action. These other issues were what EPA calls ''interim approval issues''—deficiencies that would prevent granting full approval to the State's program, but that leave the program qualified for interim approval because they don't cause it to fail to ''substantially meet'' the requirements of the CAA.

On January 9, 1995, Virginia submitted revised regulations and a revised Attorney General's opinion as amendments to its original program, and asked that EPA approve the revised program. On January 17, 1995, Virginia submitted an additional copy of the revised regulations (the version published in the Virginia Register). Finally, on May 17, 1995, Virginia again amended its program by submitting revised statutory language and an amended Attorney General's opinion. The revisions addressed many of the disapproval bases and other deficiencies EPA had previously identified. However, Virginia did not submit revised judicial standing provisions. Virginia did not revise these provisions because it believed its judicial standing provisions were adequate and had sued EPA to contest EPA's conclusion that they were not.

EPA proposed disapproval of Virginia's revised submittal in a Federal Register notice published on September 19, 1995 (60 FR 48435). EPA proposed disapproval because Virginia still did not provide citizens with adequate judicial standing to challenge permits, because Virginia did not assure that all sources required by the CAA to obtain Title V permits would be required to obtain such permits, and because Virginia did not adequately provide for collection of Title V program fees. EPA also identified as interim approval issues the fact that Virginia had defined units as ''insignificant'' at far higher emissions levels than those which EPA considered ''sound,'' as well as certain other provisions pertaining to insignificant activities.

On November 8, 1995, Virginia submitted revised Title V operating permit regulations to EPA, which the Commonwealth asserted corrected the major regulatory problems which EPA had identified in Virginia's previous submittals, and again asked that EPA approve the State's program. However, these were emergency regulations in effect for only one year, and Virginia had taken no action to revise its judicial standing provisions to give all affected citizens the right to challenge in Virginia's courts operating permits issued by Virginia. Moreover, Virginia had not corrected provisions pertaining to insignificant activities which EPA had identified as raising interim approval issues. On September 10 and 12, 1996, Virginia again submitted to EPA revised Title V program regulations, this time regulations which had been permanently adopted, and once more asked that EPA approve the State's Title V program. However, Virginia had still not revised its judicial standing provisions and had still not corrected provisions pertaining to insignificant activities. Since Virginia's November, 1995 and September, 1996 submittals did not properly address previously identified deficiencies, EPA did not propose to take action on these submittals when EPA initially received them.

Virginia has since appropriately revised its judicial standing provisions. After the Fourth Circuit Court of Appeals affirmed EPA's disapproval of Virginia's program, 80 F.3d 869 (1996), Virginia appealed its case to the U.S. Supreme Court. On January 21, 1997, the Supreme Court decided not to hear Virginia's case. Virginia had prepared for the possibility that the Courts might not rule in the Commonwealth's favor by passing a revised judicial standing law, acceptable to EPA, which would go into effect should the Courts not find for Virginia.

On February 6, 1997, Virginia submitted to EPA an Attorney General's opinion affirming that Virginia's acceptable judicial standing law would be in effect as of February 15, 1997 as a result of the U.S. Supreme Court's January 21, 1997 denial of Virginia's petition. The Attorney General's

opinion also addressed several other remaining legal issues. In addition, on February 27, 1997, Virginia's Department of Environmental Quality (VADEQ) agreed to commit to recommending revisions to regulatory requirements and also agreed to make certain interpretations of existing regulatory requirements. These agreements are discussed below when relevant.

As a result of these recent revisions, EPA has determined that Virginia's Title V submittal now substantially meets the requirements for approval set forth at 40 CFR part 70, and EPA is therefore proposing interim approval of Virginia's submittal. The portions of the submittal for which EPA is proposing interim approval consist of the operating permit and operating permit fee regulations submitted on September 10, 1996, the acid rain operating permit regulations submitted on September 12, 1996, and other non-regulatory documentation. EPA cannot propose full approval because Virginia must still address certain ''interim approval issues,'' as discussed below. Concurrently with this proposed interim approval, EPA is withdrawing the proposal to disapprove Virginia's submittal which EPA published in the Federal Register on September 19, 1995.

III. Analysis of Virginia's Submittal

This section focuses on how Virginia has corrected the program deficiencies which EPA identified in Virginia's program in the proposed disapproval notice which EPA published at 60 FR 48435 on September 19, 1995, and on certain other important deficiencies which Virginia must still address before EPA can fully approve the Commonwealth's program. Virginia's full program submittal, EPA's Technical Support Document (TSD), which provides additional analysis of Virginia's submittal, and other relevant materials are available as part of the public docket.

Virginia's Title V operating permit program submittal substantially, but not fully, meets the requirements of the CAA and of the implementing regulations at 40 CFR Part 70. Virginia has substantially corrected the deficiencies which had earlier caused EPA to disapprove and to propose to disapprove Virginia's programs. The deficiencies which EPA identified as bases for disapproval when it published its September 19, 1995, Federal Register notice proposing disapproval of Virginia's program were that Virginia's Title V program submittal: (1) Did not provide all citizens with adequate judicial standing to challenge State permits; (2) did not assure that all sources required by the CAA to obtain Title V permits would be required to obtain such permits; and (3) did not contain an adequate provision for collection of Title V program fees. EPA discusses below the changes Virginia made in its Title V submittal to correct these deficiencies. EPA also identified other deficiencies during its previous review, which it identified as interim approval issues. Virginia has already corrected some of these deficiencies. Discussed below are changes which Virginia made which adequately address some of these previously identified deficiencies, as well as certain additional changes which Virginia must still make before EPA could grant full approval to Virginia's program.

A. Deficiencies Corrected

1. Virginia's Judicial Standing Provisions

A major reason for EPA's disapproval and its proposal to disapprove Virginia's earlier Title V operating permit program submittals was that Virginia's law did not provide interested parties with adequate standing to obtain judicial review in State court of final Title V permit decisions. Virginia's judicial standing law restricted the right to judicial review to those who had suffered an actual or imminent injury which was an invasion of ''an immediate, pecuniary and substantial interest which is concrete and particularized.'' EPA, and the U.S. Court of Appeals for the 4th Circuit, concluded that Virginia's requirement that a petitioner had to demonstrate a ''pecuniary'' interest was too restrictive to be approved under Title V. See 80 F.3rd 869 (4th Cir., 1996).

After EPA's position was upheld by the Fourth Circuit Court of Appeals, Virginia appealed the case to the U.S. Supreme Court. On January 21, 1997, the Supreme Court declined to hear Virginia's case. To be prepared should EPA's position that Virginia's judicial standing provisions were deficient be upheld by the Courts, Virginia had adopted revised and acceptable judicial standing provisions, at sections 10.1–1318, 10.1–1457, and 62.1–44.29 of the Code of Virginia, but specified that the revised provisions would become effective only if Virginia's suit against EPA was unsuccessful.

The Supreme Court's refusal to take Virginia's appeal has caused Virginia's revised judicial standing provisions to become effective, and Virginia's standing provisions are now fully acceptable. Virginia's revised standing law now provides judicial standing to any person who ''meets the standard for judicial review of a case or controversy pursuant to Article III of the United States Constitution.'' It further provides that ''a person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.'' This new standard is consistent with the standard for Article III standing articulated by the Supreme Court in *Lujan* v. *Defenders of Wildlife,* 112 S. Ct. 2130 (1992). Consequently, EPA has determined that Virginia's standing provisions meet the requirements of CAA section 502(b)(6) and 40 CFR 70.4(b)(3).

2. Applicability Under the Operating Permits Program

In the original disapproval of Virginia's program, EPA identified as a basis for disapproval Virginia's failure to require issuance of permits to the proper universe of sources required by part 70. See 59 FR 62325. In addition, in its September 19, 1995, Federal Register notice proposing disapproval of Virginia's previous operating permit program submittal, EPA again cited the fact that the submittal did not ensure the applicability of the Title V operating permit program to all sources required to be subject to the program under 40 CFR 70.3 as a reason for disapproving the submittal.

This was because in the applicability sections of the earlier version of its regulations (which were designated as sections 120–08–0501 and 120–08–0601) Virginia should have listed all of the CAA requirements which trigger Title V applicability, as they are set forth at 40 CFR 70.3. Instead of meeting this requirement by listing federal CAA section 111 and 112 requirements, Virginia inappropriately listed certain of its own air pollution control regulations, into which it had incorporated federal CAA section 111 and 112 requirements. In the revised regulations it submitted to EPA in September 1996, Virginia correctly cited federal CAA section 111 and 112 requirements in the applicability sections of its regulations (now designated as sections 9 VAC 5–80–50 and 9 VAC 5–80–310), thus correcting this deficiency. As discussed later in this notice, Virginia's regulations regarding applicability

continue to present a minor facial inconsistency with part 70, which EPA does not view as an impediment to future full approval of the Commonwealth's program.

3. Permit Fee Demonstration

In its September 19, 1995, Federal Register notice EPA cited the inadequacy of the permit fee provisions in Virginia's submittal as another reason for proposing disapproval of the submittal. The deficiency in the fee provision was that Virginia had not set a minimum fee amount of $25 per ton of emissions, to be adjusted for consumer price inflation (CPI) using a 1989 base year. Virginia revised its regulations to correct this deficiency.

In its prior notice EPA also identified as a concern a statutory limit on the amount of fees which the Commonwealth can collect. This statutory limit, which is found in the Virginia Air Pollution Control Law at § 10.1–1322 B, appears to create a cap of $25 per ton of emissions, to be adjusted for inflation using a 1990 base year. EPA stated that the statute should be revised to specify a base year of 1989. EPA believed that unless Virginia made this change the Commonwealth would not be able to collect the full fee amount specified by its regulations because of the statutory cap.

Virginia did not change this statutory provision. However, Virginia's Attorney General provided an assurance that this cap would not interfere with the State's ability to collect the full amount of required fees. Virginia's Attorney General stated that: ''Virginia Code § 10.1–1322(B) provides that the annual permit fees 'shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act.'" Since Code § 10.1–1322(B) references § 502 and § 502 provides that adjustment shall be made using 1989 as the base year, the CPI adjustment required by Code § 10.1–1322(B) also employs a 1989 base year. The reference in Code § 10.1–1322(B) to a 1990 base year does not pertain to the CPI adjustment, but refers instead to the year in which the initial $ 25 per ton charge applies. In keeping with the requirements of section 502 of the CAA as interpreted by EPA and for this purpose only, the year 1990 runs from September 1, 1989 through August 31, 1990.'' See Supplement to January 6, 1995 Attorney General's Opinion dated February 6, 1997. Because the fee cap as adjusted by the CPI under the Virginia fee statute is in fact the same as the amount as the fee assessed under the Virginia regulations (i.e., the calculation begins at $25 per ton and is adjusted by changes in the CPI since 1989), EPA is satisfied that Virginia will be able to assess fees which meet the presumptive minimum required under Title V.

4. Other Deficiencies Corrected

In its September 19, 1995, Federal Register notice EPA cited several other deficiencies in the insignificant activities provisions in Virginia's submittal which would prevent EPA from being able to grant full approval to the program. Virginia corrected some but not all of these deficiencies. In this section EPA discusses the deficiencies which Virginia corrected.

In its previous proposed disapproval notice, EPA expressed concern regarding the fact that Virginia had defined as insignificant all emissions units with uncontrolled emissions of less than 10 tons per year of nitrogen dioxide, sulfur dioxide, and total suspended particulates or particulate matter (PM10), less than seven tons per year of volatile organic compounds, and less than 100 tons per year of carbon monoxide (CO). EPA noted that it considered these levels too high. Virginia responded to EPA's concerns by changing its insignificant activity provisions to define units as insignificant which had uncontrolled emissions of less than 5 tons per year (TPY) of nitrogen dioxide, sulfur dioxide, total suspended particulates or particulate matter (PM10), and volatile organic compounds. EPA considers the exemption level of less than 5 TPY of uncontrolled emissions of these pollutants to be acceptable. Virginia did not change its specification that units with uncontrolled CO emissions of less than 100 TPY are insignificant. For the reasons discussed in the September 19, 1995 Federal Register notice, EPA continues to regard this as a deficiency which must be corrected before EPA could grant full approval to Virginia's program. This deficiency is discussed further below in the section entitled *Remaining Deficiencies.*

EPA was also concerned by the fact that under Virginia's previous rules a determination of whether or not a source is subject to the operating permit program could be made without taking into account emissions from units considered to be insignificant. If the total emissions from units subject to Title V requirements were just below the levels which would trigger Title V program applicability, failure to take into account additional emissions from units which are exempt could result in a source avoiding Title V requirements to which it should have been subject. Virginia corrected this deficiency by stating in Rule 8–5 at 9 VAC 5–80–90, and in Rule 8–7 at 9 VAC 5–80–440, that ''the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this rule, the determination or imposition of any applicable requirement, or the calculation of permit fees,'' and by including a similar statement in Article 4 at 9 VAC 5–80–710. Thus, EPA has determined that Virginia has sufficiently corrected this prior deficiency, and the Commonwealth need take no further action with respect to it before EPA could grant full approval to Virginia's program.

In addition, EPA was concerned by the fact that in Appendix W of the Commonwealth's prior regulations (since redesignated as Article 4) Virginia had defined as insignificant all pollutant emission units with emissions less than the section 112(g) de minimis levels set forth at 40 CFR 63.44 or the accidental release threshold levels set forth at 40 CFR 68.130. See 9 VAC 5–80–720 B 6. EPA noted that these levels were appropriate in many cases, but were too high in others. Virginia adequately addressed this concern by adding the qualifier ''or 1000 pounds per year, whichever is less'' to the statement at 9 VAC 5–80–720 B 6.

Furthermore, while not a concern for purposes of program approval, EPA notes that the references to emission units with emissions at or below the section 112(g) de minimis levels established in 40 CFR 63.44 now have no meaning. See 9 VAC 5–80–720 B 5 and B 6. Virginia apparently assumed when it prepared its regulation that EPA would finalize the referenced list. However, EPA did not finalize this list and there are now no emissions levels ''in 40 CFR 63.44.'' As a result, emission units emitting hazardous air pollutants which are not 112(r) pollutants need to be fully described in application forms. This fact reduces the universe of units which can be considered insignificant under Virginia's regulations, but this is not a concern with respect to EPA's decision to approve or disapprove Virginia's program, because part 70 does not require States to define any particular units as insignificant.

Finally, EPA also expressed concern with the fact that in its prior program Virginia had inappropriately included ''comfort air conditioning'' and ''refrigeration systems,'' which are subject to stratospheric ozone protection requirements, in the listing of insignificant activities found in Article 4. Virginia removed these items from

the list. Thus, this previous deficiency has been fully corrected.

B. Remaining Deficiencies (Interim Approval Issues)

As noted above, in its December 5, 1994 and September 19, 1995, Federal Register notices EPA cited several other deficiencies in the insignificant activities provisions in Virginia's submittal as another impediment to granting full approval of the submittal. EPA stated that Virginia would have to correct these deficiencies before EPA could fully approve the Commonwealth's program. In this section EPA addresses one insignificant activity related deficiency which Virginia did not correct in its revised program, and several additional insignificant activity related deficiencies which EPA has identified in reviewing the Commonwealth's new program since publishing the September 1995 proposed disapproval notice.

1. Units Emitting Up To 100 TPY of CO Inappropriately Considered to be Insignificant

EPA remains concerned that Virginia continues to define any emission unit emitting less than 100 TPY of carbon monoxide (CO) as insignificant. As EPA stated in its September, 1995 proposed disapproval notice, and as discussed previously in this notice, EPA has determined that the 100 TPY emissions level is far too high. The Director of the VADEQ has recently informed EPA that VADEQ will seek to change this regulation to correct this problem. (See letter from VADEQ Director dated February 27, 1997.) Virginia must complete this correction before EPA can fully approve Virginia's program.

EPA does not consider this deficiency to be an impediment to interim approval. Virginia has identified a specific provision in its regulations that requires sources to provide emissions information in permit applications if the omission of that information ''would interfere with the determination of the applicability of the State's Title V program, the determination or imposition of any applicable requirement, or the calculation of fees.'' 9 VAC 5–80–90. See also 9 VAC 5–80–710 4. In addition, the majority of sources in Virginia which have units emitting CO are not subject to applicable requirements for CO. Sources that are subject to CO-related requirements are likely to be subject to federal standards, such as new source performance standards (NSPS), for those units, and should be aware of the specific CO-related requirements applicable to them. Thus, in the interim period before Virginia revises its regulations, EPA believes that the potential for confusion caused by Virginia's 100 TPY CO threshold should be minimized, provided the Commonwealth takes care to monitor source compliance with applicable requirements. EPA therefore does not believe it would be reasonable to disapprove Virginia's program due to this deficiency. EPA's treatment of Virginia's high CO threshold is consistent with how EPA has addressed similar problems in other States.

2. Applications Not Required to Include Sufficient Information To Identify All Applicable Requirements for Emission Units Deemed Insignificant

In connection with its review of Virginia's inappropriate designation of units emitting up to 100 TPY of CO as insignificant EPA carefully reviewed Virginia's ''gatekeeper'' provisions to determine whether or not they might substantially address the concerns this inappropriate designation had raised. ''Gatekeeper'' provisions are meant to assure that all applicable requirements for units designated as insignificant are included in both applications and permits, thereby enabling permitting authorities, reviewing members of the public, affected States, and EPA to adequately assess source compliance with all applicable requirements. During the course of its review EPA identified several deficiencies with these ''gatekeeper'' provisions.

Virginia's regulations at 9 VAC 5–80–90 D 1 now require emissions information to be included in permit applications, even for insignificant activities, ''if the omission of these emissions units from the application would interfere with the determination of the applicability of this rule, the determination or imposition of any applicable requirement, or the calculation of permit fees.'' However, with respect to including all applicable requirements in applications, EPA notes that Virginia has inappropriately included a provision in the applicability section of Rule 8–5, at 9 VAC 5–80–50 F, which states that ''[t]he provisions of 9 VAC 5–80–90 concerning application requirements shall not apply to insignificant activities designated in 9 VAC 5–80–720 with the exception of the requirements of 9 VAC 5–80–90 D 1 and 9 VAC 5–80–710,'' and that it has included a similar provision in the applicability section of Rule 8–7, at 9 VAC 5–80–360 E. As a result of these provisions, sources are required to provide only emissions information for insignificant activities, but not any additional information, such as that required by 9 VAC 5–80–90 D.2, E., or F. (which require all information necessary to determine applicable requirements), which might be required to identify applicable requirements when emissions information alone is not sufficient. Since many applicable requirements under the CAA, particularly those relating to 112(d) standards for hazardous air pollutants, could not be identified solely by emissions information, EPA does not believe that Virginia's existing ''gatekeeper'' provision fully meets the requirements of Title V. Specifically, 40 CFR 70.5(c) provides that applications ''may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part.'' (emphasis added). Before EPA can fully approve Virginia's program Virginia must assure that the requirements of § 70.5(c) will be met by appropriately revising the provisions at 9 VAC 5–80–50 F and 9 VAC 5–80–360 E.

VADEQ agrees that permit applications must include all information required to identify applicable requirements, and has agreed to seek revisions to Virginia's regulations in the future to ensure that sources provide such information. In addition, VADEQ has stated that ''[u]nder the provisions of 9 VAC 5–80–90 E 1, the Board (Virginia's Air Pollution Control Board) will require that permit applications contain a citation and description of all applicable requirements including those covering activities deemed insignificant under 9 VAC 5 Chapter 80, Article 4.'' (See letter from VADEQ Director dated February 27, 1997.) In light of this, EPA has determined that Virginia's program substantially meets the requirements of Title V with respect to this issue and that it is appropriate to grant interim approval of Virginia's program. This is consistent with how EPA has treated similar deficiencies in other States.

3. Permits Not Required To Include Applicable Requirements for Emission Units Deemed Insignificant

With respect to including all applicable requirements in permits, Virginia Rule 8–5 contains an inappropriate provision at 9 VAC 5–80–110 which states that ''For major sources subject to this rule, the board shall include in the permit all applicable requirements for all emission units in the major source except those deemed insignificant in Article 4 (9 VAC 5–80–710 *et. seq.*) of this part.'' Virginia's Rule 8–7 (the acid rain

regulation) essentially repeats this deficiency at 9 VAC 5–80–490.A.1. These provisions in Rules 8–5 and 8–7 are inadequate because they contain the qualification ''except those deemed insignificant in Article 4 * * *'' EPA cannot fully approve Virginia's program until Virginia removes these qualifications.

VADEQ agrees that the change EPA calls for above is required and has committed to seek this change. In addition, VADEQ has stated that ''In addition to the provisions of 9 VAC 110 A 1, the Board will also include in the permit those applicable requirements covering activities deemed insignificant under 9 VAC 5 Chapter 80, Article 4.'' (See letter from VADEQ Director dated February 27, 1997.) Finally, Virginia's regulations elsewhere suggest that the Commonwealth's program inadvertently contains the deficiencies identified at 9 VAC 5–80–110 A.1 and 5–80–490 A.1. This is suggested by the fact that 9 VAC 5–80–110 B.1, 5–80–150 A.4, 5–80–490 B.1 and 5–80–510 B 4 require that permits ''specify and reference applicable emission limitations and standards, including those [* * *] that assure compliance with all applicable requirements'' and that permits may be issued only if ''the conditions of the permit provide for compliance with all applicable requirements.'' In light of this, EPA has determined that Virginia's program substantially meets the requirements of Title V with respect to this issue and that it is appropriate to grant interim approval of Virginia's program. EPA's treatment of this issue is consistent with how it has been treated in other States.

4. Emergency or Standby Compressors, Pumps, and/or Generators Inappropriately Defined as Insignificant

EPA also notes that under 9 VAC 5–80–720 C 4 Virginia designates as insignificant emissions units ''Internal combustion powered compressors and pumps used for emergency replacement or standby service, operating at 500 hours per year or less, as follows'' and then goes on to cite emergency generators of various horsepower ratings, depending on whether or not the generators are gasoline, diesel, or natural gas powered. EPA believes that 9 VAC 5–80–720 C 4 is confusing in that Virginia first defines emergency or standby compressors or pumps as insignificant, and then further qualifies the units considered insignificant by discussing various sizes of emergency generators. VADEQ has agreed to seek to clarify this provision in the revised regulations Virginia will be submitting in the future. In the interim, VADEQ has explained to EPA that ''With regard to the provisions of 9 VAC 5–80–720 C 4 regarding the designation of certain internal combustion powered compressors and pumps as insignificant emissions units, the exemption levels (expressed in horsepower) for the emergency generators refer to the size of the engines that provide the power to the compressors and pumps.'' (See letter from VADEQ Director dated February 27, 1997.)

EPA notes that engines of the sizes designated will likely be large enough to trigger certain NSPS standards, e.g., 40 CFR part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, or GG—Standards of Performance for Stationary Gas Turbines, or be major sources in and of themselves. EPA believes that to avoid confusion any list of insignificant activities should not contain items which may clearly be subject to applicable requirements. Accordingly, before EPA can grant full approval to the Commonwealth's program, Virginia must not only clarify its insignificant activity provision for emergency pumps, compressors, or generators, but must also reduce the horsepower size designations sufficiently to exclude any unit which would likely trigger an applicable requirement or emit pollutants in major amounts. It is important to note that the major source thresholds for air pollutants will vary depending on nonattainment designations in the Commonwealth. For example, given that there is a serious ozone nonattainment area in northern Virginia, the State's insignificant activities will be judged relative to the major source thresholds of 50 tons/year for volatile organic compounds and nitrogen oxides.

EPA took a similar position in its notice giving final interim approval to Tennessee's program. See 61 FR 39335 (July 29, 1996). In that notice EPA stated that ''insignificant activities lists should avoid the potential for confusion created when an activity that is plainly subject to an applicable requirement is included.'' 61 FR 39337. EPA required, as an interim approval item, that Tennessee address EPA's concerns regarding the potential for confusion which arose because certain activities and emission units were listed as insignificant which could also be subject to applicable requirements. EPA took similar positions when it proposed approval of West Virginia's program at 60 FR 44799 (August 29, 1995), and then approved that program at 60 FR 57352 (November 15, 1995), and when it proposed approval of Florida's program at 60 FR 32292 (June 21, 1995), and then approved that program at 60 FR 49343 (September 25, 1995).

5. ''Off-Permit Changes'' Defined as Including Changes Subject to Requirements Under Title IV

In addition to the acid rain regulatory provisions cited above that track flaws in Virginia's main Title V rule, EPA is concerned with two other provisions in the Commonwealth's regulations relating to acid rain requirements. Currently, EPA's Part 70 rule allows sources to make certain so-called ''off-permit'' changes that are not addressed or prohibited by the permit without obtaining a permit revision. See 40 CFR 70.4(b)(14). However, this flexibility does not extend to changes that are modifications under Title I of the CAA or those that are subject to any of the acid rain requirements under Title IV of the CAA. 40 CFR 70.4(b)(15). Regarding acid rain requirements, EPA stated in its preamble to the final part 70 rule that ''the allowance trading system provided for in Title IV will not be feasible unless there is an accurate accounting of each source's obligations thereunder in the Title V permit.'' 57 FR 32250, 32270 (July 21, 1992). Virginia's regulations allowing ''off permit'' changes at 9 VAC 5–80–280.C and 5–80–680.C fail to exclude from eligibility changes that are subject to requirements under Title IV. For the reasons discussed in the preamble to the final part 70 rule, EPA has determined that it cannot grant full approval to Virginia's program until Virginia revises its regulations to correctly exclude Title IV changes from off-permit eligibility. In the meantime, EPA does not view this deficiency as preventing Virginia's program from substantially meeting the requirements of Title V. Thus, the Commonwealth's program is still eligible for interim approval.

6. Affirmative Defense Provisions Deficient

Part 70 provides that a source may qualify for an affirmative defense for noncompliance with a technology based emission limitation in ''emergency'' situations if certain conditions are met. Section 70.6(g)(1) defines what kind of situations may qualify as ''emergencies,'' and § 70.6(g)(3) provides, in part, that the affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that, ''(iv) the permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due

to the emergency.'' Section 70.6(g)(3) further provides that this notice would satisfy the requirement for ''prompt'' reporting of deviations required by § 70.6(a)(3)(iii)(B).

In its program Virginia uses the term ''malfunction'' instead of emergency. Virginia's definition of this term is consistent with how EPA defines ''emergency.'' However, Virginia's operating permit regulations at 9 VAC 5–80–250.B.4 and 5–80–650 provide in part that *''[f]or malfunctions that occurred for one hour or more,* the permittee submitted to the board by the deadlines established in B.4.a and B.4.b. a notice and a written statement containing a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notice fulfills the requirement of 9 VAC 5–80–110 F.2.b. to report promptly deviations from permit requirements.'' (emphasis added)

Virginia allows sources to claim the affirmative defense for malfunctions which last less than one hour even when the source does not notify the Commonwealth of the malfunction. Thus, Virginia's affirmative defense provision is less stringent than that required under § 70.6(g), and sources may be able to shield themselves from liability beyond what is allowed under part 70. EPA cannot grant full approval to Virginia's program until Virginia revises its regulations to correct this deficiency. However, EPA does not view this deficiency as preventing Virginia's program from substantially meeting the requirements of Title V, since it is of limited scope and Virginia's regulations otherwise comport with § 70.6(g). Thus, the Commonwealth's program is still eligible for interim approval.

C. Other EPA Comments

1. Acid Rain Provisions

Virginia submitted Rule 8–7 to require operating permits for sources subject to acid rain emission reduction requirements or limitations. Except for the deficiencies discussed elsewhere in today's notice, EPA has determined that Virginia's Rule 8–7 for acid rain sources is acceptable.

2. Authority and Commitments for Section 112 Implementation

Section 112 of the CAA requires EPA to control hazardous air pollutant emissions from various categories of sources by establishing maximum achievable control technology (MACT) standards. Upon request, EPA delegates the authority to implement and enforce section 112 requirements to State and local agencies. Virginia requested that EPA grant Virginia ''delegation of authority upon approval of the operating permit program for all Section 112 programs except Section 112(r), prevention of accidental releases.'' (See the VADEQ Director's 11/12/93 letter submitting Virginia's initial request for approval of its Title V program.) Virginia demonstrated that it has in Va. Code § 10.1–1322.A. and Rule 8–5 the broad legal authority to incorporate into permits and to enforce applicable CAA section 112 requirements. Virginia supplemented its broad legal authority with a commitment to ''develop the state regulatory provisions as necessary to carry out these programs and the responsibilities under the delegation after approval of the operating permit program and EPA has issued the prerequisite guidance for development of these Title III programs.'' (See the VADEQ Director's 11/12/93 letter submitting Virginia's initial request for approval of its Title V program.) (Note: States must meet their responsibilities under the CAA and part 70 without respect to whether or not EPA has issued ''guidance.'' Nevertheless, EPA's view is that it has issued sufficient guidance to enable States to develop all necessary regulatory provisions pertaining to section 112 requirements (formerly referred to as Title III requirements). With respect to CAA section 112(r), Virginia has the authority under section 9 VAC 5–80–90 1C to require that an applicant state that the source has complied with CAA section section 112(r) or state in the compliance plan that the source intends to comply and has set a schedule to do so.

When EPA has not promulgated an applicable Federal MACT emission limitation, section 112(g) of the Clean Air Act requires the Title V permitting authority (generally a State or local agency responsible for the program) to determine a MACT emission limitation on a case by case basis. On December 27, 1996, EPA promulgated regulations at 40 CFR part 63 (61 FR 68384, December 27, 1996) (the 112(g) MACT rule) implementing certain provisions in section 112(g). The 112(g) MACT rule assures that owners or operators of a newly constructed, reconstructed, or modified major sources of hazardous air pollutants (HAP)(unless they are specifically exempted) will be required to install effective pollution controls during the period before EPA can establish a national MACT standard for a particular industry, provided they are located in a State with an approved Title V permit program. The rule does not require new source MACT for modifications to existing sources.

The 112(g) MACT rule establishes requirements and procedures for owners or operators to follow to comply with section 112(g), and contains guidance for permitting authorities in implementing 112(g). Section 112(g) will be in effect in a State or local jurisdiction on the date that the permitting authority, under Title V, places its implementing program for section 112(g) into effect. Permitting authorities have up to 18 months from the December 27, 1996, date of publication of the 112(g) rule to initiate implementing programs. After the 18 month transition period, if a State or local permitting authority is unable to initiate a section 112(g) program, there are two options for obtaining a MACT approval: Either (1) the EPA will issue 112(g) determinations for up to one year; or (2) the permitting authority will make 112(g) determinations according to procedures specified at 40 CFR 63.43, and will issue a notice of MACT approval that will become final and legally enforceable after the EPA concurs in writing with the permitting authority's determination. Requirements for permitting authorities are found at 40 CFR 63.42.

To place its 112(g) implementing program into effect, the chief executive officer of the State or local jurisdiction must certify to EPA that its program meets all the requirements set forth in the 112(g) rule, and publish a notice stating that the program has been adopted and specifying its effective date. The program need not be officially reviewed or approved by EPA.

3. Deferral of Area Sources

Virginia's regulations continue to present a minor facial inconsistency with part 70's applicability requirements with respect to permitting of area sources which EPA wishes to clarify in advance. In Virginia Rule 8–5, 9 VAC 5–80–50 D.1 provides that area sources subject to requirements promulgated under section 111 or 112 of the CAA are deferred from the obligation to obtain permits, and that the ''decision to require a permit for these sources shall be made at the time that a new standard is promulgated and shall be incorporated into [Virginia's regulations] along with the listing of the new standard.''

EPA's regulations at 40 CFR 70.3(b)(2) provide that the decision to exempt area sources that become subject to section 111 or 112 standards adopted after July 21, 1992, will be made when such standards are promulgated. EPA interprets this language to mean that unless the new standard explicitly exempts area sources from Title V

applicability, these area sources remain subject to the permitting requirement of CAA section 502(a) and are required to obtain permits.

EPA was initially concerned that owners and operators of these area sources might, based on Virginia's regulations, mistakenly believe they are not required to obtain permits either because: (1) EPA may have not made an explicit decision whether to exempt them in setting the relevant standard, thus resulting in no ''decision'' to require them to obtain a permit being incorporated into Virginia's regulations at the time the standard is incorporated; or (2) Virginia may have not yet incorporated into its regulations the relevant standard, and its associated implicit or explicit decision whether to exempt area sources. Regarding the first possible reason, EPA believes that Virginia's regulations can be reasonably interpreted to properly require such sources to obtain permits, if Virginia's incorporation of relevant sections 111 and 112 standards is treated as having incorporated both any explicit decisions to exempt sources from permitting and any explicit or implicit decisions by EPA to subject them to the permitting requirement. The VADEQ has committed to EPA that ''In cases where EPA has promulgated a standard under section 111 or section 112 after July 21, 1992 and failed to declare whether or not the facility or source category covered by the standard is subject to the Title V program or not, the Board in making decisions under 9 VAC 5–80–90 D shall presume that the facility or source category is subject to the Title V program.'' (See letter from the Director of the VADEQ dated February 27, 1997.) Regarding the second possible area of confusion, Virginia's provision does not require area sources to obtain permits, even if EPA has explicitly stated in the substantive section 111 or section 112 rulemaking that they must, unless and until Virginia incorporates the underlying standard into its regulations. Thus, if Virginia does not incorporate the substantive federal rules into its regulations, the requirement for these sources to obtain a permit is not triggered under Virginia's program. The Commonwealth has incorporated all relevant sections 111 and 112 standards to date, including any that extend the permitting requirement to area sources. Thus, the potential for confusion exists only with respect to section 111 or section 112 standards EPA promulgates in the future. EPA notes that Virginia has procedures for prompt incorporation of new federal standards. Since EPA has no reason to believe that the Commonwealth will not continue to timely incorporate these standards as they become promulgated, Virginia's regulations do not in the Agency's view present an impediment to full approval regarding this issue. EPA will, of course, in conducting its oversight of Virginia's implementation of the program, watch for any indication that delayed incorporation of substantive standards results in area sources not getting permitted in a timely manner.

4. Audit Immunity and Privilege Law

Among other minimum elements required for approval of a State operating permits program, the CAA includes the requirement that the permitting authority has adequate authority to assure that sources comply with all applicable CAA requirements as well as authority to enforce permits through recovery of certain civil penalties and appropriate criminal penalties. Sections 502(b)(5) (A) and (E) of the CAA. In addition, Part 70 explicitly requires States to have certain enforcement authorities, including authority to seek injunctive relief to enjoin a violation, to bring suit to restrain violations imposing an imminent and substantial endangerment to public health or welfare, and to recover appropriate criminal and civil penalties. 40 CFR 70.11. Moreover, section 113(e) of the CAA sets forth penalty factors for EPA or a court to consider for assessing penalties for civil and criminal violations of Title V permits. EPA is concerned about the potential impact of some State privilege and immunity laws on the ability of such States to enforce federal requirements, including those under Title V of the CAA.

Virginia has adopted legislation that would provide, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations.

Virginia's Voluntary Environmental Assessment Privilege, Code § 10.1–1198, provides a privilege that protects from disclosure documents [1] and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law. Particularly since documents required by Title V of the Act and by part 70 are documents ''required by law,'' EPA interprets the Commonwealth's privilege as not extending to Title V required documents. Virginia's Office of the Attorney General has submitted a legal opinion which supports EPA's understanding that the Commonwealth's Title V program requirements for compliance monitoring, reporting of violations, record keeping, and compliance certification, together render the privilege inapplicable to compliance evaluations, at a Title V source, of the Commonwealth's Title V requirements.

Virginia's immunity law, Va. Code § 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty.

The Office of the Attorney General's legal opinion states that the phrase ''to the extent consistent with requirements imposed by federal law'' renders this statute inapplicable to Title V enforcement. No person can claim or be accorded immunity from any enforcement action that involves the Commonwealth's Title V program because to do so would be inconsistent with the requirements of Title V of the federal Clean Air Act. Thus, the statute by its terms cannot apply to sources operating under a Title V permit.'' Thus, EPA is not listing any conditions on Virginia's Title V program approval for this issue because the legislation will not preclude the Commonwealth from enforcing its Title V permit program consistent with the CAA's requirements.

[1] Document is defined to include ''field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, videotape, computer-generated or electronically recorded information, maps, charts, graphs and surveys.'' Va. Code § 10.1–1198.A.

5. Variance Provision

While not an issue for purposes of program approval, it should be noted that Virginia has the authority to issue a variance from requirements imposed by Virginia law. The variance provision at Va. Code § 10.1–1307.C. empowers the Air Pollution Control Board, after a public hearing, to grant a local variance from any regulation adopted by the board. EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently is proposing to take no action on this provision of Virginia law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable permit, except where such relief is consistent with the applicable requirements of the CAA and is granted through procedures allowed by Part 70. EPA reserves the right to enforce the terms of the permit where the permitting authority purports to grant relief from the duty to comply with a permit in a manner inconsistent with the CAA and Part 70 procedures.

6. Permit Fee Changes

EPA notes that Virginia Rule 8–6 includes a provision, at 9 VAC 5–80–40 D. and E., which allows Virginia to assess a fee of less than $25 per ton (1989 dollars) adjusted for inflation, if Virginia determines that it would collect more money than required to fund its Title V program if it assessed the full $25 per ton fee (1989 dollars), adjusted for inflation. If Virginia chooses in the future to collect a fee of less than $25 (1989 dollars), adjusted for inflation, its fee assessment would no longer meet the requirement for presumed adequacy under 40 CFR 70.9. Accordingly, Virginia would trigger the requirements under 40 CFR 70.9(b)(5) that it provide EPA with a detailed accounting that its fee schedule meets the requirements of 40 CFR 70.9(b)(1).

Before the Commonwealth assesses a fee lower than the presumptive minimum of $25 per ton (1989 dollars), adjusted for inflation, it must obtain EPA approval of such a fee. EPA would approve such a fee if Virginia submitted a detailed accounting showing that the fee would result in the collection of sufficient funds to run a fully adequate Title V program. This requirement for EPA approval of any fee lower than the presumptive minimum is consistent with the requirements of 40 CFR 70.9, and is implied by 9 VAC 5–80–40 D., which states that ''Any adjustments made to the annual permit program fee shall be made within the constraints of 40 CFR 70.9.''

7. Title I Modifications

The EPA proposed to define ''Title I modification'' in the August 31, 1995 Operating Permits Program and Federal Operating Permits Program proposed rule. The EPA proposed to define Title I modification to mean any modification under part C and D of Title I or sections 111(a)(4), 112(a)(5), or 112(g) of the Act and regulations promulgated pursuant to § 61.07 of part 61. If the definition of ''Title I modification'' is finalized as proposed in the August 31, 1995, proposed rule, the State's definition would be consistent with part 70. If the definition of ''Title I modification'' is changed from that proposed in the August 31, 1995, proposed rule to include minor new source review changes, the Commonwealth will need to revise its permit regulation to be consistent with part 70.

IV. Proposed Aaction

EPA is proposing to grant interim approval to the operating permits program submitted by Virginia, and is soliciting public comment on whether or not such approval is appropriate. The portions of the submittal for which EPA is proposing interim approval consist of the operating permit and operating permit fee regulations submitted on September 10, 1996, the acid rain operating permit regulations submitted on September 12, 1996, and other non-regulatory documentation. If EPA does grant such approval, Virginia will be required to correct all of the remaining deficiencies in its program which are discussed earlier in this notice before EPA could grant full approval to Virginia's program. The interim approval, which would not be renewable, would extend for a period of two years. During the interim approval period Virginia would be protected from sanctions for failure to have a program, and EPA would not be obligated to promulgate a Federal permits program in the Commonwealth. Permits issued under a program with interim approval have full standing with respect to Part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

V. Sanctions Stayed

Pursuant to section 502(d)(2)(A) of the CAA, EPA may, at its discretion, apply any of the sanctions in section 179(b) at any time following the effective date of a final disapproval. The available sanctions include a prohibition on the approval by the Secretary of Transportation of certain highway projects or the awarding of certain federal highway funding, and a requirement that new or modified stationary sources or emissions units for which a permit is required under Part D of Title I of the CAA achieve an emissions reductions-to-increases ratio of at least 2-to-1. In addition, EPA is required by section 502(d)(2)(B) of the CAA to apply one of the sanctions in section 179(b), as selected by the Administrator, on the date 18 months after the effective date of a final disapproval, unless prior to that date the State had submitted a revised operating permits program and EPA had determined that it corrected the deficiencies that prompted the final disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions are to apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State has not submitted a revised program that EPA has determined corrects the disapproved program's deficiencies, a second sanction is required. Finally, if EPA has not granted full approval to the State's program by November 15, 1995, and the State's program at that point does not have interim approval status, EPA must promulgate, administer and enforce a Federal permits program for the State on that date.

EPA first disapproved Virginia's operating permits program in a Federal Register notice published on December 5, 1994, which became effective on January 5, 1995. As a result, EPA's authority to apply discretionary

sanctions to Virginia arose on January 5, 1995, and the 18-month period before which EPA is required to apply sanctions also began on that date. EPA was required to apply the first sanction on July 5, 1996 and the second sanction on January 5, 1997, unless by those dates EPA had determined that Virginia had corrected each of the deficiencies that prompted EPA's original disapproval. EPA interprets the CAA to require the Administrator to select by rulemaking which sanction to apply first, before mandatory sanctions may actually be imposed. These sanctions have not been applied in Virginia because EPA has not yet published such a rule covering deficiencies under Title V.

EPA's sanctions policy for applying sanctions for State Title V Operating Permits Program largely follows the approach under Title I of the Act (see 40 CFR 52.31, 59 FR 39832 (August 4, 1994). Update to Sanctions Policy for State Title V Operating Permits Programs, John S. Seitz, Director Office of Air Quality Planning and Standards, (March 28, 1995).

Based on this proposed approval of the Virginia Title V operating permits program, EPA is making an interim final determination by this action that the Commonwealth has corrected the deficiencies prompting the original disapproval of the Virginia Title V operating permits program. EPA has determined that it is more likely than not that the Commonwealth has corrected the deficiencies that prompted the original disapproval of the Virginia operating permits program. This interim final determination will stay the implementation of sanctions unless and until either this proposed approval is finalized or is withdrawn.

Although this action regarding sanctions is effective upon publication, EPA will take comment on this interim final determination as well as on EPA's proposed interim approval of the Commonwealth's submittal. EPA will publish a final notice taking into consideration any comments received on EPA's proposed action and this interim final action. EPA has determined that it is appropriate to give immediate effect to this interim final determination that Virginia has corrected its prior disapproval deficiencies because it would not be in the public interest to leave Virginia vulnerable to sanctions pending finalization of the proposed approval. See, e.g., 59 FR 39832, 39838 and 39849–50 (August 4, 1994).

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any comments on this action and any comments on EPA's proposed interim approval of Virginia's Title V submittal, EPA determines that the Virginia's Title V submittal is not approvable and this final action was inappropriate, EPA will take further action to disapprove the Title V submittal. If EPA's proposed approval of the Virginia Title V submittal is reversed, then Virginia would remain vulnerable to sanctions under section 502(d)(2)(A) of the CAA.

VI. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by April 17, 1997.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the CAA 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 significantly impact a substantial number of small entities.

D. Federal 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 action that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must consider 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. This Federal action proposes to approve Virginia's pre-existing Title V program, and imposes no new Federal requirements. Accordingly, this action would not impose a federal mandate which would result in additional costs for State, local, or tribal governments, or for the private sector.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 7, 1997.

W. Michael McCabe,

Regional Administrator,

Region III.

[FR Doc. 97–6826 Filed 3–17–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 52
Tuesday, March 18, 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

Agricultural Marketing Service

[Docket No. FV97–925–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925.

DATES: Comments on this notice must be received by May 19, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Charles L. Rush, Marketing Order Administration Branch, F & V, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C., 20090–6456, or FAX (202) 720–5698; or Rose M. Aguayo, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906.

SUPPLEMENTARY INFORMATION:

Title: Grapes Grown in a Designated Area of Southeastern California, Marketing Order 925.

OMB Number: 0581–0109.

Expiration Date of Approval: August 31, 1997.

Type of Request: Extension and revision of currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the table grape marketing order program, which has been operating since 1984.

The table grape marketing order authorizes the issuance of quality regulations and inspection requirements. Regulatory provisions apply to table grapes shipped within and outside of the production area, except those specifically exempt. The order also has authority for production and marketing research and development projects.

The order, and rules and regulations issued thereunder, authorize the California Desert Grape Administrative Committee (Committee), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to table grape supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. Table grapes may be shipped beginning in April and ending in August, and these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the marketing order. In addition, table grape growers and handlers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.078 hours per response.

Respondents: Table grape growers and handlers in the designated production area in California.

Estimated Number of Respondents: 274.

Estimated Number of Responses per Respondent: 1.850.

Estimated Total Annual Burden on Respondents: 39.58 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functioning of the table grape marketing order program, including whether the information will have practical utility; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden of respondents; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0109 and Grapes Grown in a Designated Area of Southeastern California Marketing Order No. 925, and be mailed to USDA in care of Charles L. Rush at the above address. Comments should reference the docket number and the date and page number of this issue of the Federal Register. All comments received will be available for public

inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 12, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–6784 Filed 3–17–97; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. FV97–927–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Winter Pears Grown in Oregon, Washington, and California, Marketing Order No. 927.

DATES: Comments on this notice must be received by May 19, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204, Telephone: (503) 326–2055, Fax: (503) 326–7440.

SUPPLEMENTARY INFORMATION:

Title: Winter Pears Grown in Oregon, Washington, and California, Marketing Order 927.

OMB Number: 0581–0089.

Expiration Date of Approval: September 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the winter pear marketing order program, which has been operating since 1939.

The winter pear marketing order authorizes the issuance of grade, size, quality, inspection, and reporting requirements for any variety of winter pear. Currently grade, size, quality, and inspection requirements are not being used. The marketing order also provides authority to fund projects involving production research, marketing research and development, and marketing promotion, including paid advertising. The order, and rules and regulations issued thereunder, authorize the Winter Pear Control Committee (committee), which is responsible for locally administering the program, to require handlers and growers to submit certain information. Much of the information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a convenience to persons who are required to file information with the Committee relating to winter pear production and supplies, shipments, inventories, and other information needed to effectively carry out the purposes of the AMAA and the order. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, winter pear growers and handlers who are nominated by their peers to serve as representatives on the committee must file nomination forms with the Secretary.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.7546 hours per response.

Respondents: Winter pear producers and for-profit businesses handling fresh winter pears produced in Oregon, Washington, and California.

Estimated Number of Respondents: 1,890.

Estimated Number of Responses per Respondent: 2.4714

Estimated Total Annual Burden on Respondents: 3,570 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0089 and the Winter Pear Marketing Order No. 927, and be sent to USDA in care of Teresa Hutchinson at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 12, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–6785 Filed 3–17–97; 8:45 am]

BILLING CODE 3410–02–P

Agricultural Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the

Agricultural Research Service's (ARS) intention to request approval for a new information collection from applicants for Federal financial assistance, in order to ensure compliance with civil rights laws and regulations.

DATES: Comments on this notice must be received by May 22, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Gene P. Spory, Associate Deputy Administrator, Financial Management, Agricultural Research Service, U.S. Department of Agriculture, 6303 Ivy Lane, Room 820, Greenbelt, Md. 20770–1433, (301) 344–8106.

SUPPLEMENTARY INFORMATION:

Title: Application for ARS funding for grants and assistance-type cooperative agreements.

Type of Request: Approval to collect information regarding applicants for Federally funded programs.

Abstract: ARS's Federally assisted programs consist of the following types of extramural awards executed under the requirements of Public Law 95–224, Federal Grant and Cooperative Agreement Act of 1977:

1. Grants and Assistance-Type Cooperative Agreements awarded in support of basic or applied research.

2. Grants awarded in support of research conferences and symposiums, and other non-research activity.

The U.S. Department of Justice, Civil Rights Division, has determined that ARS has the responsibility to collect such data from entities that have applied or received Federal assistance in the form of grants or assistance-type cooperative agreements in order to ensure compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Rehabilitation Act of 1973. Together, these acts prohibit discrimination on the basis of race, color, national origin, sex, or disability in any program receiving Federal financial assistance.

ARS's data collection duties are pursuant to 28 CFR part 42 §§ 42.401–42.415), which the Department of Justice references as the legal basis regarding Title VI for all Federal agencies extending Federal assistance. The purpose of part 42 is ''to insure that Federal agencies which extend financial assistance properly enforce Title VI of the Civil Rights Act of 1964.'' Part 42 further states that Federal agencies which extend financial assistance have the responsibility to enforce Title VI, in accordance with the authority under Executive Order 12250. In addition, the Department of Agriculture's Title VI regulations at 7 CFR 15.5(a) require the ARS, as the administering agency to conduct compliance reviews of the practices of recipients of ARS grants and assistance-type cooperative agreements to determine compliance with requirements of Title VI.

Furthermore, the Department of Agriculture is responsible for ensuring compliance with Title IX pursuant to Executive Order 12250, 45 CFR 86.1 *et seq.*, and 7 CFR 15a.1 *et seq.*, and compliance with the Rehabilitation Act pursuant to Executive Order 12250, 28 CFR 41.1 *et seq.*, and 7 CFR 15b.1 *et seq.*

Data requested to assure compliance with these Civil Rights Acts and regulations include (1) race, ethnic, sex, and disability information on employees conducting the research, and membership of planning and advisory bodies, and (2) other information necessary to effectively enforce Title VI, Title IX, and the Rehabilitation Act.

Information to be obtained from the public includes: Project Proposal; Application for Funding; Budget Information; Other Federal Financial Assistance Support; Research Assurance Statement; Civil Rights Assurance Certification; Certification Regarding Debarment and Suspension; Certification Regarding Drug-Free Workplace; Certification Requirements Related to Lobbying.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average four hours per set, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Universities, animal and plant research scientists and individuals who perform research relevant to the mission of ARS.

Estimated Number of respondents: 200.

Estimated Total Annual Burden on Respondents: 800 hours.

Copies of the information to be collected can be obtained from Gene P. Spory, Associate Deputy Administrator, Financial Management, at (301) 344–8106.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Gene P. Spory, Associate Deputy Administrator, Financial Management, ARS, U.S. Department of Agriculture, 6303 Ivy Lane, Room 820, Greenbelt, MD 20770–1433. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C.

Gene P. Spory,

Associate Deputy Administrator, Financial Management.

[FR Doc. 97–6731 Filed 3–17–97; 8:45 am]

BILLING CODE 3410–03–M

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension for, and revision of, an information collection currently in effect with respect to the Standards for Approval of Warehouses for grain, rice, dry edible beans, and seed.

DATES: Comments on this notice must be received on or before May 19, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Steve Closson, Chief, USDA, Farm Service Agency, Warehouse and Inventory Division, Storage Contract Branch, STOP 0553, PO Box 2415, Washington, D.C. 20250–2415, (202) 720–7434.

SUPPLEMENTARY INFORMATION:

Title: Standards for Approval of Warehouses, Reporting and Recordkeeping Requirements.

OMB Number: 0560–0009.

Expiration Date: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0009, as identified above, allows CCC to effectively administer storage agreements. These agreements are authorized by the CCC Charter Act. 15 U.S.C. 714 note. The forms allow CCC to contract for

warehouse storage and related services and to monitor and enforce all provisions of 7 CFR part 1421. These forms are furnished to interested warehouse operators or used by warehouse examiners employed by CCC to secure and record information about the warehouse operator and the warehouse. The general purpose of the forms is to provide those charged with executing contracts for CCC a basis to determine whether the warehouse and the warehouse operator meet applicable standards for a contract and to determine compliance once the contract is approved.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .67 hours per response.

Respondents: Warehouse Operators.

Estimated Number of Respondents: 3,130.

Estimated Number of Responses per Respondent: 1.7.

Estimated Total Annual Burden on Respondents: 379,240 hours.

Proposed topics for comment include: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; or (d) minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Steve Closson, Chief, USDA, Farm Service Agency, Warehouse and Inventory Division, Storage Contract Branch, STOP 0553, P.O. Box 2415, Washington, D.C. 20250–2415, (202) 720–7434.

Signed at Washington, DC, on March 7, 1997.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–6733 Filed 3–17–97; 8:45 am]

BILLING CODE 3410–05–P

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA

ACTION: Notice of publication

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1996, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1996 is also available. Interested parties may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP: 0553, P.O. Box 2415, 5962-South Agriculture Building, Washington, D.C. 20250–2415, telephone: 202–720–3822.

Signed at Washington, D.C., on March 10, 1997.

Bruce R. Weber,

Administrator, Farm Service Agency.

[FR Doc. 97–6734 Filed 3–17–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–97]

Foreign-Trade Zone 18, San Jose, CA, Request for Manufacturing Authority, Solectron Corporation Plant (Electronic/Computer/ Telecommunication Equipment), San Jose, California

An application has been submitted to the Foreign-Trade Zones Board (the Board) by San Jose Distribution Services, operator of FTZ 18, pursuant to § 400.32(b)(1)(ii) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Solectron Corporation, to ''kit''/ assemble computer/telecommunication subassemblies and products within FTZ 18. It was formally filed on March 7, 1997.

Solectron Corporation is a contract assembler/manufacturer of computer/ telecommunication subassemblies and products, specializing in the production of complex printed circuit boards. Solectron plans to use a site (up to 20,000 sq. ft.) within FTZ 18 to conduct a range of activities under zone procedures as an adjunct to operations at its Milpitas, California, plant. The requested scope of authority for manufacturing under zone procedures parallels the range of activity conducted at the Milpitas plant.

Solectron is proposing to ''kit''/ assemble a variety of computer/ telecommunication equipment and subassemblies within FTZ 18, including printed circuit board assemblies, computers and components, telecommunication equipment and components, fax machines and modems.

Foreign components, which will account for an estimated 40 to 50 percent of material value, may include printed circuit boards, conductors, resistors, transmitters, diodes, transistors, capacitors, fuses, circuit breakers, switches, surge suppressors, motor starters, modems, facsimile machines and parts, routers and bridgers, computer and telecommunications equipment parts. It is estimated that some 40 percent of the FTZ production would be exported.

Zone procedures would exempt Solectron from Customs duty payments on foreign components used in production for export. On domestic sales, the company would be able to choose the duty rate (duty-free to 8.5%, with most less than 2.7%) that applies to the finished product. The duty rates on foreign components range from duty-free to 9.8% percent. The application indicates that zone procedures will improve the plant's international competitiveness and will help increase exports.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 19, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 2, 1997.

A copy of the request will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 5201 Great American Pkwy., #456, Santa Clara, California 95054

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: March 10, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–6681 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 14–97]

Foreign-Trade Zone No. 143—Sacramento, CA Area, Application for Subzone Status, Hewlett-Packard Company (Computers and Related Electronic Products), Sacramento, CA Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Sacramento-Yolo Port District, grantee of FTZ 143, requesting special-purpose subzone status for the manufacturing and distribution facilities (computers, printers, measurement devices, medical products and related products) of the Hewlett-Packard Company (Hewlett-Packard), located in the Sacramento, California area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 10, 1997.

The Hewlett-Packard facilities are located at three sites totaling 569.2 acres (5.9 mil. sq. ft. at completion) in the Sacramento, California area:

Site 1 (500.2 acres, 1,233,800 sq. ft. plus 2,900,000 sq. ft. proposed)—main manufacturing plant, 8000 Foothills Boulevard, Roseville, California;

Site 2 (26.7 acres, 515,600 sq. ft.)—warehouse/processing facility, 2975–3055–3071 Venture Drive, Lincoln, California;

Site 3 (42.3 acres, 800,000 sq. ft. plus 400,000 sq. ft. proposed)—warehouse/processing facility, 2222 East Beamer Street/ 221 Hanson Way, Woodland, California.

The facilities (4,000 employees) are used for storage, manufacture, and distribution for import and export of computers and related devices, printers, electronic test and measurement devices, electronic medical products, and related electronic products and components. A number of components are purchased from abroad (an estimated 40% of value on manufactured products), including: printed circuit boards, silicon wafers, rectifiers, integrated circuits, memory modules, CD–ROM drives, disk drives, scanners, hard drives, keyboards, monitors/displays (CRT and LCD type), LEDs, speakers, microphones, belts, valves, bearings, plastic materials, industrial chemicals, sensors, filters, resistors, transducers, fuses, plugs, relays, ink cartridges, toner cartridges, switches, fasteners, cards, transformers, DC/electric motors, magnets, modems, batteries, cabinets, power supplies, cables, copper wire, power cords, optical fiber, casters, cases, labels, and packaging materials (1997 duty range: free—14.2%).

Zone procedures would exempt Hewlett-Packard from Customs duty payments on foreign components used in export production. On its domestic sales, Hewlett-Packard would be able to choose the lower duty rate that applies to the finished products (free—13.2%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 19, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 2, 1997.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Office of the Port Director, Sacramento-Yolo Port District, 1251 Beacon Blvd., Suite 200, West Sacramento, CA 95691

Dated: March 10, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–6682 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 11–97]

Foreign-Trade Zone 26—Atlanta, GA, Area, Expansion of Manufacturing Authority–Subzone 26D, Yamaha Motor Manufacturing Corporation of America Plant (All-Terrain Vehicles), Newnan, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting on behalf of the Yamaha Motor Manufacturing Corporation of America (YMMC), operator of FTZ Subzone 26D, YMMC plant, Newnan, Georgia, an expansion of the scope of authority to include the manufacture of all-terrain vehicles under FTZ procedures within Subzone 26D. It was formally filed on March 6, 1997.

Subzone 26D was approved by the Board in 1989 with activity granted for the manufacture of personal water craft and golf cars (Board Order 433, 54 FR 24370, 6–7–89). The manufacturing authority for golf cars is subject to a restriction that requires privileged foreign status (19 CFR 146.41) to be elected on all foreign components.

YMMC is now requesting authority to expand the scope of FTZ authority to include the manufacture of four wheel, all-terrain vehicles (ATVs) under FTZ procedures for the U.S. market and export. The plant's manufacturing space will be increased from 400,000 to 540,000 square feet within the 238-acre plant site. The new all-terrain vehicle activity will involve welding, plastic molding, painting, and assembly using domestic and foreign components. Foreign-sourced components and subassemblies will comprise approximately 49 percent of the finished ATVs material value, and include: engines, head/tail lights, wiring harnesses, electrical components, spark plugs, flanges/spacers/grommets, ignition coils, starter motors, breathers, pulleys, exhaust components, carburetors, axles, pinion gears, brake components, fasteners, shock absorbers, springs, bearings, hoses, gaskets/seals, o-rings, steering gears (duty rate range: free–8.9%). The application indicates that 54 percent of the finished ATVs' material value will be U.S. sourced within four years of the launch of production.

FTZ procedures would exempt YMMC from Customs duty payments on the foreign components used in export activity (about 2% of shipments). On its domestic sales, the company would be able to elect the duty rate that applies to finished ATVs (2.5%) for the foreign components noted above. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 19, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 2, 1997).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade

Zones Board, Room 3716, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 10, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–6683 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 13–97]

Foreign-Trade Zone 21—Charleston, South Carolina Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the South Carolina State Ports Authority (SCSPA), grantee of FTZ 21, requesting authority to expand its zone in the Charleston, South Carolina area, within the Charleston, South Carolina Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 7, 1997.

FTZ 21 was approved on June 12, 1975 (Board Order 106, 40 FR 25613, 6/17/75) and expanded on February 28, 1995 (Board Order 734, 60 FR 12735, 3/8/95), June 20, 1996 (Board Order 832, 61 FR 33491, 6/27/96) and October 23, 1996 (Board Order 850, 61 FR 57383, 11/6/96). The zone project includes 9 general-purpose sites in the coastal area of South Carolina: *Site 1* (134 acres)—Tri-County Industrial Park, Summerville; *Site 2* (57 acres)—Cainhoy Industrial Park, Wando; *Site 3* (160 acres)—Crowfield Corporate Center, Goose Creek; *Site 4* (998 acres)—Low Country Regional Industrial Park, Early Branch; *Site 5* (2,017 acres)—SCSPA's terminal complex, Charleston; *Site 6* (19 acres)—Meadow Street Business Park, Loris; *Site 7* (1,782 acres)—Myrtle Beach International Airport/former Myrtle Beach U.S. Air Force Base, Myrtle Beach; *Site 8* (23 acres)—within Wando Park, Mount Pleasant (expires 12/31/97); and, *Site 9* (548 acres)—Charleston Business Park, Charleston. An application is currently pending with the Board to expand and remove the time limit for *Site 8* within Wando Park in Mount Pleasant (Docket No. 62–96).

The applicant is now requesting authority to expand the general-purpose zone to include four new sites in the North Charleston area: *Site 10* (105 acres)—within the 133-acre Ashley Industrial Park, 3045 Ashley Phosphate Road, North Charleston; *Site 11* (459 acres)—within the 500-acre Charleston International Commerce Park, 5500 International Blvd., Charleston; *Site 12* (1,120 acres, 2 tracts) within the Palmetto Commerce Park, Ladson Road, North Charleston; and, *Site 13* (76 acres)—North Charleston Convention Center complex, 500 Coliseum Drive, North Charleston. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 19, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 2, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 81 Mary Street, Charleston, South Carolina 29402

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: March 10, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–6680 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: March 18, 1997.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on mechanical transfer presses from Japan.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than February 28, 1998.

	Period to be reviewed
ANTIDUMPING DUTY PROCEEDINGS	
India: Forged Stainless Steel Flanges, A–533–809	2/1/96–1/31/97

	Period to be reviewed
Akai Impex, Ltd.	
Mukand, Ltd.	
India: Stainless Steel Bar, A–533–810	2/1/96–1/31/97
Mukand, Ltd.	
Ferro Alloys Corporation Limited	
Japan: Mechanical Transfer Presses, A–588–810	2/1/96–1/31/97
Aida Engineering, Ltd.	
Hitachi Zosen Corporation	
Ishikawajima-Harima Heavy Industries	
Japan: Melamine, A–588–056	2/1/96–1/31/97
Taiyo Ink Manufacturing Co.	
Nissan Chemical Industries, Ltd.	
The People's Republic of China: Axes/Adzes,* A–570–803	2/1/96–1/31/97
Fujian Machinery & Equipment Import & Export Corporation	
Shandong Machinery Import & Export Corporation	
Tianjin Machinery Import & Export Company	
The People's Republic of China: Bars/Wedges,* A–570–803	2/1/96–1/31/97
Fujian Machinery & Equipment Import & Export Corporation	
Liaoning Limeng Group Limited Company	
Shandong Machinery Import & Export Corporation	
Tianjin Machinery Import & Export Company	
Zibo Tool Factory	
The People's Republic of China: Hammers/Sledges,* A–570–803	2/1/96–1/31/97
Fujian Machinery & Equipment Import & Export Corporation	
Shandong Machinery Import & Export Corporation	
Tianjin Machinery Import & Export Company	
The People's Republic of China: Picks/Mattocks,* A–570–803	2/1/96–1/31/97
Fujian Machinery & Equipment Import & Export Corporation	
Shandong Machinery Import & Export Corporation	
Tianjin Machinery Import & Export Company	
*All other exporters of hand tools from the People's Republic of China are conditionally covered by this review.	
The People's Republic of China: Manganese Metal,* A–570–840	6/14/95–1/31/97
China National Electronics Import & Export Hunan Company	
China Hunan International Economic Development (Group) Corporation	
China Metallurgical I/E Hunan Corp./Hunan Nonferrous Metal I/E Association Corp.	
Minmetals Precious & Rare Mineral Import & Export Corporation	
*All other exporters of manganese metal from the People's Republic of China are conditionally covered by this review.	
The People's Republic of China: Paint Brushes,* A–570–501	2/1/96–1/31/97
Hebei Animal By-Products I/E Corp.	
Hunan Provincial Native Produce & Animal By-Products Import & Export Corporation	
*All other exporters of paint brushes from the People's Republic of China are conditionally covered by this review.	
The People's Republic of China: Certain Cased Pencils, A–570–827	12/1/95–11/30/96
Shanghai Foreign Trade Corporation*	
*Shanghai Foreign Trade Corporation was inadvertently identified as subject to administrative review request (January 17, 1997, (62 FR 2647). As all other exporters of certain cased pencils from the PRC, this company is conditionally covered by this review.	
COUNTERVAILING DUTY PROCEEDINGS	
None.	

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: March 11, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–6684 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order.

SUMMARY: In response to requests from two respondents and one U.S. producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States for the period of May 1, 1995 through April 30, 1996.

As a result of the review, the Department has preliminarily determined that no dumping margins exist for both respondents. We intend not to revoke the order on DRAMs from Korea.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service not to assess antidumping duties. 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 issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 May 10, 1993, the Department published in the Federal Register (58 FR 27250) the antidumping duty order on dynamic random access memory semiconductors (DRAMs) from the Republic of Korea. On May 8, 1996, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period of May 1, 1995, through April 30, 1996 (61 FR 20791). We received timely requests for review from two manufacturers/exporters of subject merchandise to the United States: Hyundai Electronics Industries, Co. (Hyundai), and LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.). The petitioner, Micron Technologies Inc., requested an administrative review of these same two Korean manufacturers of DRAMs. On June 25, 1996, the Department initiated a review of the above Korean manufacturers (61 FR 32771). The period of review (POR) for all respondents was May 1, 1995, through April 30, 1996. The Department is conducting this review in accordance with section 751 of the Act.

In addition, on June 25, 1996, we automatically initiated an investigation to determine if Hyundai and LGS made sales of subject merchandise below the cost of production (COP) during the POR based upon the fact that we disregarded sales found to have been made below the COP in the original less-than-fair-value (LTFV) investigation, which was the most recent period for which final results were available when this review was initiated.

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabit or above from the Republic of Korea (Korea). Included in the scope are assembled and unassembled DRAMs of one megabit and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive. The POR is May 1, 1995, through April 30, 1996.

Intent Not To Revoke

Both respondents submitted requests, in accordance with 19 CFR 353.25(b), to revoke the order covering DRAMs from Korea.

A threshold question here concerns the Department's responsibility in rendering a preliminary determination on revocation. The Department's regulations provide that in a preliminary determination on revocation, the Department ''will * * * include [its decision] whether there is a reasonable basis to believe that the requirements for revocation or termination are met.'' 19 CFR 353.25(c)(2)(iii). In the respondents'' view, the ''reasonable basis'' standard has been met once certain evidence on the record arguably supports a finding that a ''reasonable basis'' exists to believe that the requirements for revocation have been met. We disagree with this approach and believe that the Department is obligated to issue a preliminary determination which provides parties with its preliminary view, on the basis of *all* of the information on the record at that time, of whether the revocation requirements have been met. This provides the parties notice of the Department's initial views on revocation and affords them the opportunity to present arguments either supporting or opposing the Department's preliminary determination. *See* memorandum from Thomas G. Ehr to Robert S. LaRussa,

February 24, 1997. Thus, the question here is whether, on the basis of *all* of the evidence of record, the Department's requirements for revocation have been preliminarily met.

Under the Department's regulations, the Department may revoke an order in part if the Secretary concludes that, among other things: (1) ''one or more producers or resellers covered by the order have sold the merchandise at not less than fair value for a period of at least three consecutive years'; (2) ''[i]t is not likely that those persons will in the future sell the merchandise at less than fair value * * *''; and (3) ''the producers or resellers agree in writing to the immediate reinstatement of the order as long as any producer or reseller is subject to the order, if the Secretary concludes that the producer or reseller, subsequent to the revocation, sold the merchandise at less than fair value.'' 19 CFR 353.25(a)(1).

In this case, the first and third criteria for revocation have preliminarily been met. The Department has found that the two respondents, LGS and Hyundai, did not sell at less than normal value in the first and second reviews under this order. Also, in this review, LGS and Hyundai have preliminarily been found not to have made less than normal value sales. Further, both respondents have certified to immediate reinstatement of the order pursuant to the third criterion noted above. Accordingly, the key question here is whether the second revocation criteria—the ''no likelihood'' standard—has been met. In considering this issue, it is important to note that the standard for revocation is not whether the Department finds that there is a likelihood of future dumping. Rather, the standard is whether the Department has found that ''no likelihood'' of future dumping exists.

On the ''no likelihood'' issue, the Department has a considerable factual record before it. At the request of the parties, the Department established a process for the submission of factual information on the issue of whether no likelihood of future dumping exists. Both the petitioner and respondents have now made several submissions of information relevant to the likelihood issue, including various in-depth economic analyses. Accordingly, the Department has a full record before it on which to make a preliminary determination on this issue.

As discussed below, on the basis of this record, we preliminarily find that the evidence of record does not support a conclusion at this time that there is no likelihood of future dumping by the Korean respondents. Therefore, on this basis, we have preliminarily determined not to revoke the Korean DRAM order. As this ruling is preliminary, all parties will have a full opportunity to present relevant arguments on the likelihood issue through briefs and a hearing, if one is requested.

As a threshold matter, the respondents argue that the Department's preliminary finding that LGS and Hyundai have not made less than normal value sales for three consecutive years is dispositive of the ''no likelihood'' issue. We note that the presence of no dumping for three years is germane to whether there is no likelihood that future dumping will occur. Indeed, in most cases, this is the only evidence on the record on the ''likelihood'' issue at the time of the Department's preliminary determination and, therefore, it often becomes determinative of whether the Department issues a notice of intent to revoke. In this case, however, as noted above, the Department has a much fuller record on this issue, with a wide range of economic information and analysis on other factors pertaining to revocation. The Department can, and has, considered other factors in its ''no likelihood'' analysis, such as ''conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales.'' See Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 61 FR 49727 (September 23, 1996) (''Brass Sheet and Strip').

In this case, the Department has preliminarily examined the relevant market circumstances on the basis of the submissions of the parties and publicly available information. On the basis of this examination, we have preliminary found the following: (1) The DRAM market is in a year-long downturn, with steep price declines in the DRAM market beginning in January 1996 and continued price declines forecasted; (2) the downturn has resulted in declines of sales and revenues in the DRAM market, growth in DRAM inventories, and the existence of significant DRAM oversupply; (3) the Korean respondents and other DRAM producers have continued to increase DRAM production during the downturn (which may further depress prices during such an oversupply period); (4) the Korean respondents will likely continue to maintain a substantial presence in the U.S. market during various phases of the business cycle (including periods of significant price decline) in light of substantial Korean capacity and large U.S. demand; and (5) based on the information on the record, Korean pricing in the United States appears, according to price trends, to be at or near normal value, indicating that only a slight downward movement in U.S. price will likely result in dumping margins.

More specifically, DRAM prices declined severely starting in late 1995, and this decline in prices continued well into 1996, after the conclusion of the current POR (*i.e.*, April 30, 1996). For example, according to publicly available data, the average U.S. price for a 16 megabyte (MB) DRAM fell from approximately $18.00 in May 1996 to approximately $7.00 in December 1996. Similarly, the average U.S. price for a 4 MB DRAM fell from approximately $5.25 in May 1996 to a low of approximately $2.00 in December 1996. This represents a 61 percent decline in prices between the end of the third period of review (April 30, 1996) and December 1996. DRAM prices are still unstable and continue to fall. Since DRAMs are a commodity product, it is reasonable to expect that Korean producers will have to match prevailing market prices in the United States.

As prices have fallen, Korean DRAM producers have continued to increase DRAM production. Publicly available information indicates that Korea's three major integrated circuit companies (Hyundai, LGS, and Samsung Electronics Co. Ltd.) will increase their DRAM output by almost 30 percent in 1997, despite poor chip forecasts and increased production in Japan and Taiwan. Although the Korean producers have announced gradual production cutbacks, there is no evidence that these cutbacks have occurred. While some industry projections forecast increased demand, the existing DRAM oversupply is likely to cause prices to remain low or fall lower in the future.

Given these circumstances, we preliminarily find that it would be difficult for the Korean respondents to remain competitive without selling DRAMs at less than normal value. The history of the DRAM industry is one of dumping in periods of significant downturn. Various foreign producers were found to have dumped in the mid-1980s (see Dynamic Random Access Memory Devices from Japan, 51 FR 15943 (April 29, 1986)), and the Korean respondents in this case were found to have dumped during the period of downturn in 1991–1992 during the LTFV investigation. While Korean respondents did not dump in the three consecutive review periods, most of this period was marked by an expanding DRAM market. DRAMs prices stabilized

in mid-1992, and the industry experienced growth until late 1995. This third review period ended in April 1996, and there has been a continuing decline in global prices since that time. Further, we note that the price decline in 1996 was more severe than in prior downturns. These market trends indicate that respondents may have dumped in the post April 1996 period (*i.e.*, a period of continuing industry downturn) in the absence of the order. A comparison of U.S. market prices to Korean costs and projections of Korean costs indicates that Korean pricing would be likely to be at or below normal value in the absence of the order. For these reasons, we preliminarily find that there is no basis to conclude that there is no likelihood of future dumping by LGS and Hyundai. Therefore, we preliminarily intend not to revoke the antidumping order on DRAMS from Korea.

We welcome the views of all interested parties on this issue. In particular, we welcome the views of the parties on the extent to which, in current and projected market circumstances, the order is constraining LGS and Hyundai from dumping and the degree to which dumping would be likely to occur in the absence of the order.

United States Price

In calculating U.S. price, the Department used constructed export price (CEP), as defined in section 772(b) of the Act, when the merchandise was first sold to an unaffiliated U.S. purchaser after importation.

We calculated CEP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions from the starting price, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States (these included U.S. credit expenses, warranty expenses, royalty payments, U.S. commissions, advertising and promotion expenses, and U.S. indirect selling expenses, including inventory carrying costs, incurred by respondents'' U.S. subsidiary) in accordance with sections 772(c)(2) and 772(d)(1) of the Act. We added duty drawback, where applicable, pursuant to section 772(c)(1)(B) of the Act. Pursuant to section 772(d)(3) of the Act, we reduced the United States price by the amount of profit to derive the CEP.

For DRAMs that were further manufactured into memory modules after importation, we deducted all value added in the United States, pursuant to section 772(e) of the Act. The value added consists of the costs of the materials, fabrication, and general expenses associated with the portion of the merchandise further manufactured in the United States. In determining the costs incurred to produce the memory module, we included materials, fabrication, and general expenses, including selling expenses and interest expenses, associated with the portion of the merchandise further manufactured in the United States, as well as a proportional amount of profit or loss attributable to the value added. Profit or loss was calculated by deducting from the sales price of the memory module all production and selling costs incurred by the company for the memory module. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. No other adjustments were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales of DRAMs in the home market to serve as a viable basis for calculating NV, we compared respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the aggregate volume of home market sales of the foreign like products for all respondents was greater than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents, in accordance with section 773(a)(1)(C) of the Act.

Because LGS made some home market sales to related parties during the POR, we tested these sales to ensure that, on average, the related party sales were at ''arms-length.'' To conduct this test, we compared the gross unit prices of sales to related and unrelated customers net of all movement charges, direct and indirect selling expenses, value-added tax and packing. Based on the results of that test, we discarded from LGS' home market database all sales made to a related party where that related party failed the ''arm's-length'' test.

We disregarded many of Hyundai's and LGS' sales found to have been made below the COP during the original LTFV investigation, the most recent period for which final results were available at the time of the initiation of this review. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of both respondents for purposes of this administrative review.

We calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A), and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment, in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by respondents in the questionnaire responses.

In accordance with section 773(b)(1) of the Act, in order to determine whether to disregard home market sales made at prices below the COP, we examined whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permit the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made in ''substantial quantities'' and at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. If we disregarded all contemporaneous sales of a comparison model pursuant to section 773(b)(1) of the Act, we based normal value on constructed value (CV).

In accordance with section 773(e) of the Act, we calculated CV based on respondents' cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the costs of materials, fabrication, and G&A as reported in the CV portion of the questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of respondents' questionnaire responses. We based selling expenses and profit on the information reported in the home market sales portion of respondents' questionnaire responses. See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement

of Final Determination, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of above-cost per-unit HM selling expenses weighted by the total quantity of home market sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

For both respondents, the Department relied on the submitted COP and CV information. There were no adjustments to respondents' reported COP and CV data.

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade, as defined by section 773(a)(1)(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product. We calculated NV based on delivered prices to unrelated customers and, where appropriate, to related customers in the home market. In calculating NV, we made adjustments, where appropriate, for inland freight, inland insurance, discounts, rebates, and Korean brokerage and handling charges.

Both respondents only had CEP sales during the POR. For comparisons to CEP sales, we made deductions to NV, where appropriate, for home market credit expenses, advertising expenses, royalty expenses, and bank charges in accordance with section 773(a)(6) of the Act, due to differences in circumstances of sale. We also reduced NV by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased NV for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We also made further adjustments, when applicable, to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57 of the Department's regulations. Finally, in accordance with section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in the circumstances of sale to account for any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act.

Level of Trade and CEP Offset

As set forth in section 773(a)(2)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In order to determine whether sales in the comparison market are at a different level of trade than the export price or CEP, we examined whether the comparison sales were at different stages in the marketing process than the export price or CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Similarly, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 51891, 51896 (October 4, 1996).

Secondly, 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 normal value is determined. When constructed export price is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a constructed export price offset when: (1) NV is at a different level of trade, and (2) the data available do not provide an appropriate basis for a level of trade adjustment. Also, in accordance with section 773(a)(7)(B), to qualify for a CEP offset, the level of trade in the home market must constitute a more advanced stage of distribution than the level of trade of the CEP sales.

In order to identify levels of trade, the Department must review information concerning marketing stages and selling functions of the manufacturer/exporter. We reviewed the questionnaire responses of both respondents to establish whether there were sales at different levels of trade based on marketing stages, selling functions performed, and services offered to each customer or customer class. For both respondents, we identified one level of trade in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by both respondents to original equipment manufacturers (OEMs) and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same marketing stage and selling functions. For the U.S. market, all sales for both respondents were reported as CEP sales. The level of trade of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the marketing stage and selling functions performed by the Korean companies for U.S. CEP sales and preliminarily determine that they are at a different level of trade from the Korean companies' home market sales because the Korean companies engaged in a different marketing stage and had fewer selling functions for the adjusted CEP sales than for their home market sales. For instance, the Korean companies did not engage in any general promotion, marketing activities, or price negotiations for U.S. sales.

Because we compared CEP sales to home market sales at a different level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, both respondents only sold at one level of trade in the home market; therefore, there is no basis upon which either respondent can demonstrate a consistent pattern of price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level of trade adjustment but the level of trade in the HM is a more advanced stage of distribution than the level of trade of the CEP sales, a CEP offset is appropriate. Both respondents claimed a CEP offset. We applied the CEP offset to normal value or constructed value, as appropriate. The level of trade methodology employed by the Department in these preliminary results of review is based on the facts particular to this review. The Department will continue to examine its policy for

making level of trade comparisons and adjustments for its final results of review.

Because both respondents made sales at differing levels of trade in the home market and in the United States, and because we determined it was not possible to quantify the price differences resulting from the differing levels of trade, we made a CEP offset to NV for both respondents pursuant to section 773(a)(7)(B) of the Act. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or home market indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the POR:

Manufacturer/exporter	Percent margin
Hyundai Electronic Industries, Inc	0.01
LG Semicon Co., Ltd	0.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentages 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 completion of the final results of these administrative reviews for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Hyundai and LGS, because their weighted-average margins were de minimis, will be zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original 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, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 3.85 percent, the ''all-others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) 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 Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 10, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–6679 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 85–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Trust International Services Company, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Trust International Services Company, Inc.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5l3l. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1996). Pursuant to this authority, a certificate of review was issued on May 9, 1985 to Trust International Services Company, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, § 235.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (b) of the regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On April 29, 1996, the Department of Commerce sent to Trust International Services Company, Inc. a letter containing annual report questions with a reminder that its annual report was due on June 23, 1996. Additional reminders were sent on October 28, 1996 and on January 3, 1997. The Department has received no written response from Trust International Services Company, Inc. to any of these letters.

On February 4, 1997, and in accordance with § 325.10 (c) (2) of the Regulations, (15 CFR 325.10 (c) (2)), the Department of Commerce sent a letter by certified mail to notify Trust International Services Company, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual

report. In addition, a summary of this letter allowing Trust International Services Company, Inc. thirty days to respond was published in the Federal Register on February 10, 1997 at 62 FR 5961. Pursuant to § 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of Trust International Services Company, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Trust International Services Company, Inc. for its failure to file an annual report. The Department has sent a letter, dated March 13, 1997, to notify Trust International Services Company, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the Federal Register (325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11).

Dated: March 13, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–6796 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 031097D]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public committee meetings.

SUMMARY: Two committees of the North Pacific Fishery Management Council (Council) will meet in Seattle, WA, in April. The Improved Retention/ Improved Utilization (IR/IU) Committee will meet April 1, 1997, beginning at 8:30 a.m. The Vessel Bycatch Accountability (VBA) Committee will meet April 2–3, 1997, beginning at 9:00 a.m. on April 2, continuing into April 3, as necessary.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, Room 2039, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

1. The IR/IU Committee will meet to review the Proposed Rule for regulations for improved retention and utilization of groundfish in the Bering Sea and Aleutian Islands. The Committee will also review a preliminary draft of similar regulatory measures for Gulf of Alaska groundfish and prepare recommendations for the Council.

2. The VBA Committee has been tasked with identifying alternatives to be addressed in an analysis for a program to implement individual vessel bycatch accounting measures.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 11, 1997.

Bruce Morehead,

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

[FR Doc. 97–6706 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031097C]

Marine Mammals; Permit No. 765 (P70E)

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

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that permit no. 765, issued to Dr. William A. Watkins, Oceanographer Emeritus, Woods Hole Oceanographic, Institution, Woods Hole, MA 02543, to take marine mammals was extended until December 31, 1997.

ADDRESSES: The amendment 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 (301/712–2289); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.29 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of 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.

March 7, 1997

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–6707 Filed 3–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 193. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 193 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 1997.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 192. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ANCHORAGE						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
ANCHORAGE NAVAL RESERVE CENTER						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
BARROW	110		76		186	03/01/96
BETHEL	93		61		154	02/01/97
CORDOVA	74		72		146	02/01/97
CRAIG						
05/01 -- 08/31	97		96		193	03/01/96
09/01 -- 04/30	75		94		169	03/01/96
DELTA JUNCTION	75		64		139	02/01/97
DUTCH HARBOR-UNALASKA	110		75		185	02/01/97
EARECKSON AIR STATION	75		60		135	02/01/97
EIELSON AFB						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
ELMENDORF AFB						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
FAIRBANKS						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
FT. GREELY	75		64		139	02/01/97
FT. RICHARDSON						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
FT. WAINWRIGHT						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
HOMER						
05/01 -- 09/30	116		64		180	02/01/97
10/01 -- 04/30	90		61		151	02/01/97
JUNEAU	89		79		168	02/01/97
KENAI-SOLDOTNA						
05/01 -- 09/30	94		61		155	02/01/97
10/01 -- 04/30	74		59		133	02/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KETCHIKAN						
05/01 -- 09/30	99		77		176	02/01/97
10/01 -- 04/30	83		75		158	02/01/97
KING COVE	85		69		154	03/01/96
KING SALMON	77		68		145	03/01/96
KLAWOCK						
05/01 -- 08/31	97		96		193	03/01/96
09/01 -- 04/30	75		94		169	03/01/96
KODIAK	88		72		160	02/01/97
KOTZEBUE						
05/16 -- 09/15	101		81		182	04/01/97
09/16 -- 05/15	90		80		170	04/01/97
KULIS AGS						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
MURPHY DOME						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
NOME	93		76		169	02/01/97
PETERSBURG	82		58		140	02/01/97
SEWARD						
05/01 -- 09/15	114		74		188	02/01/97
09/16 -- 04/30	78		71		149	02/01/97
SITKA-MT. EDGECOMBE						
04/01 -- 10/31	97		63		160	02/01/97
11/01 -- 03/31	86		62		148	02/01/97
SKAGWAY						
05/01 -- 09/30	99		77		176	02/01/97
10/01 -- 04/30	83		75		158	02/01/97
SPRUCE CAPE	88		72		160	02/01/97
TANANA	93		76		169	02/01/97
VALDEZ						
05/15 -- 09/15	105		65		170	02/01/97
09/16 -- 05/14	84		64		148	02/01/97
WASILLA	89		65		154	02/01/97
WRANGELL						
05/01 -- 09/30	99		77		176	02/01/97
10/01 -- 04/30	83		75		158	02/01/97
[OTHER]	75		60		135	02/01/97
AMERICAN SAMOA:						
AMERICAN SAMOA	73		53		126	03/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
GUAM:						
GUAM (INCL ALL MIL INSTAL)	190		85		275	03/01/97
HAWAII:						
CAMP H M SMITH	110		70		180	07/01/96
EASTPAC NAVAL COMP TELE AREA	110		70		180	07/01/96
FT. DERUSSEY	110		70		180	07/01/96
FT. SHAFTER	110		70		180	07/01/96
HICKAM AFB	110		70		180	07/01/96
HONOLULU NAV & MC RESERVE CTR	110		70		180	07/01/96
ISLE OF HAWAII: HILO	74		60		134	07/01/96
ISLE OF HAWAII: OTHER	105		63		168	07/01/96
ISLE OF KAUAI	114		75		189	07/01/96
ISLE OF KURE	10		8		18	07/01/96
ISLE OF MAUI						
04/16 -- 12/14	100		63		163	07/01/96
12/15 -- 04/15	113		65		178	07/01/96
ISLE OF OAHU	110		70		180	07/01/96
KANEOHE BAY MC BASE	110		70		180	07/01/96
KEKAHA PACIFIC MISSILE RANGE FAC	114		75		189	07/01/96
KILAUEA MILITARY CAMP	74		60		134	07/01/96
LULUALEI NAVAL MAGAZINE	110		70		180	07/01/96
NAS BARBERS POINT	110		70		180	07/01/96
PEARL HARBOR AFLOAT TNG GRP, MIDDLE	110		70		180	07/01/96
PEARL HARBOR NAVAL COMPLEX	110		70		180	07/01/96
PEARL HARBOR NAVAL SUBMARINE BASE	110		70		180	07/01/96
PEARL HARBOR NAVY PUBLIC WORKS CTR	110		70		180	07/01/96
SCHOFIELD BARRACKS	110		70		180	07/01/96
WHEELER ARMY AIRFIELD	110		70		180	07/01/96
[OTHER]	79		62		141	06/01/93
JOHNSTON ATOLL:						
JOHNSTON ATOLL	22		24		46	07/01/96
MIDWAY ISLANDS:						
MIDWAY ISLAND NAVAL AIR FACILITY	60		13		73	02/01/97
MIDWAY ISLANDS	60		13		73	02/01/97

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LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
NORTHERN MARIANA ISLANDS:						
ROTA	83		90		173	05/01/96
SAIPAN	138		89		227	05/01/96
TINIAN	61		72		133	06/01/95
[OTHER]	20		13		33	12/01/90
PUERTO RICO:						
BAYAMON						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
CAROLINA						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
DORADO						
04/01 -- 12/21	164		83		247	10/01/96
12/22 -- 03/31	300		96		396	10/01/96
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]						
05/01 -- 11/23	70		64		134	10/01/96
11/24 -- 04/30	114		68		182	10/01/96
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
LUIS MUNOZ MARIN IAP AGS						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
MAYAGUEZ	90		58		148	02/01/97
PONCE	107		58		165	10/01/96
ROOSEVELT ROADS						
05/01 -- 11/23	70		64		134	10/01/96
11/24 -- 04/30	114		68		182	10/01/96
ROOSEVELT ROADS NAS 2/						
05/01 -- 11/23	70		64		134	10/01/96
11/24 -- 04/30	114		68		182	10/01/96
SABANA SECA						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
SABANA SECA US NAVAL SEC GRP ACT						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
SAN JUAN						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SAN JUAN US NAVAL RESERVE STATION						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
[OTHER]	70		50		120	10/01/96
VIRGIN ISLANDS (U.S.):						
ST. CROIX	127		78		205	08/01/96
ST. JOHN						
04/16 -- 12/21	242		89		331	08/01/96
12/22 -- 04/15	391		100		491	08/01/96
ST. THOMAS						
04/12 -- 12/15	168		93		261	08/01/96
12/16 -- 04/11	268		103		371	08/01/96
WAKE ISLAND:						
WAKE ISLAND	40		35		75	10/01/96

Dated: March 13, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–6747 Filed 3–17–97; 8:45 am]

BILLING CODE 5000–04–C

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The T&E Infrastructure Ad Hoc Study of the HQ USAF Scientific Advisory Board will meet on April 8–11, 1997 at Wright-Patterson AFB OH from 8 a.m. to 5 p.m.

The purpose is to receive briefings and gather information on the Test & Evaluation Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–6788 Filed 3–17–97; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on April 17, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The Department of the Navy proposes to amend systems of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record systems being amended are set forth below as amended, published in their entirety.

Dated: March 12, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–10

SYSTEM NAME:

Aviation Training Jacket *(September 20, 1993, 58 FR 48853).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N01542–1'.

* * * * *

N01542–1

SYSTEM NAME:

Aviation Training Jacket.

SYSTEM LOCATION:

The Aviation Training Jacket accompanies the individual student to each Naval Air Training Command

squadron as he progresses in the training program. Upon completion or termination of training, the Aviation Training Jacket is forwarded to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval aviators, naval flight officers, naval flight surgeons, aviation warrant officers, and pre-commissioning training for aviation maintenance duty and aviation intelligence officers. This includes records in the above categories for individuals who do not complete prescribed training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aviation flight training, practical and academic grade scores, including pre-training aviation test battery scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an up-to-date student flight record and to evaluate the student's individual training progress and qualifications, including aircraft, medical and physiological qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To educational institutions upon individual requests for academic transcripts.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in metal filing cabinets and limited access word processing equipment.

RETRIEVABILITY:

Name and date of designation, completion or termination of training and Social Security Number/officer file number.

SAFEGUARDS:

Access is restricted to the individual or those who maintain training records and those who are directly involved with the individual's training or evaluation. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

RETENTION AND DISPOSAL:

Two years after completion of advanced training, files are retired to the Federal Records Center, Fort Worth, Texas for 50 years and then destroyed. An individual aviator who retires or is released from active/reserve duty may request custody of his/her file by writing to the Chief of Naval Air Training.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

NOTIFICATION PROCEDURE:

The individual is informed that the Aviation Training Jacket is being maintained and has ready access to it during training. After training, he can submit written request to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide name, Social Security Number or officer file number, and date of completion or termination of training. Personal visitors can provide proof of identity by military identification card, active or retired, or driver's license and some record of naval service.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide name, Social Security Number or officer file number, and date of completion or termination of training. Personal visitors can provide proof of identity by military identification card, active or retired, or driver's license and some record of naval service.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Prior educational experience, flight grades, academic grades supporting flight training, physical fitness/survival/swimming proficiency, aviation physiology training and qualifications, and birth certificate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–11

SYSTEM NAME:

Flight Instruction Standardization and Training (FIST) Jacket *(September 20, 1993, 58 FR 48854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N03760–2'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Jacket is retained at the individual's command until detachment, at which time it is given to the individual.'

* * * * *

N03760–2

SYSTEM NAME:

Flight Instruction Standardization and Training (FIST) Jacket.

SYSTEM LOCATION:

The FIST jacket is located at the various Naval Air Training Commands where the individual may be assigned. Contact the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041, to determine the location of any specific command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval aviators and naval flight officers assigned to duty as instructors within the Naval Air Training Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record of flight instruction standardization and training required of naval aviators and naval flight officers assigned duty as instructors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To ensure that the flight instructor's qualifications are current to instruct in the designated naval aircraft, both academically and physiologically. The system is used to schedule training flights, qualify and designate flight instructors, etc. This system is used by Commanding Officers and training personnel of the command to which the individual is assigned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in metal file cabinets.

RETRIEVABILITY:

Name, rank, and Social Security Number.

SAFEGUARDS:

Access is restricted to the individual, his commanding officer, or those involved in maintaining training records. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

RETENTION AND DISPOSAL:

Jacket is retained at the individual's command until detachment, at which time it is given to the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

NOTIFICATION PROCEDURE:

The individual is informed that the FIST jacket is being maintained, participates in its development and, additionally, is required to review the jacket with his instructor periodically.

Individuals seeking access to information about themselves contained in this system should address written inquiries to the activity where assigned or to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide their name, rank, and Social Security Number.

RECORD ACCESS PROCEDURES:

The individual is informed that the FIST jacket is being maintained, participates in its development and, additionally, is required to review the jacket with his instructor periodically. Any questions should be directed to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Academic tests, flight performance evaluation, check flight evaluation, instructor's evaluation, command determinations, and, personal input.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings *(September 20, 1993, 58 FR 48858).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper and automated records, microfiche, and cassette recordings.'

RETRIEVABILITY:

Delete entry and replace with 'Year of disability proceeding, name, record number, and Social Security Number within that year.'

SAFEGUARDS:

Delete entry and replace with 'Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Computerized system is password protected. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The building in which the office is located employs security guards.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained on-site at the Naval Council of Personnel Boards for one year. After that, they are retired to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for retention. After a total of 75 years, records are destroyed.'

* * * * *

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings.

SYSTEM LOCATION:

Physical Evaluation Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps personnel who have been considered by a Physical Evaluation Board for separation or retirement by reason of physical disability (including those found fit for duty by such boards).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Department of Veterans Affairs and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions/appellate actions/review taken in the case; recordings of physical evaluation board hearings; rebuttals submitted by the member; intra and interagency correspondence concerning the case; correspondence from and to the member, members of Congress, attorneys, and other interested members; and documents concerning the appointment of trustees for mentally incompetent service members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1216 and E.O. 9397 (SSN).

PURPOSE(S):

To determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred, and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel.

Used by the Office of the Judge Advocate General relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651–2653); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs to verify information of service connected disabilities in order to evaluate applications for veteran's benefits.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records, microfiche, and cassette recordings.

RETRIEVABILITY:

Year of disability proceeding, name, record number, and Social Security Number within that year.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Computerized system is password protected. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Records are retained on-site at the Naval Council of Personnel Boards for one year. After that, they are retired to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for retention. After a total of 75 years, records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military medical boards and medical facilities; Department of Veterans Affairs and civilian medical facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Bureau of Medicine and Surgery; the Judge Advocate General; Navy and Marine Corps local command activities; other activities of the Department of Defense; and correspondence from private counsel and other interested persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01900–1

SYSTEM NAME:

Naval Discharge Review Board Proceedings *(September 9, 1996, 61 FR 47489).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N01000–2'.

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders; microfiche; plastic recording disks; recording cassettes; and computerized data base'.

* * * * *

SAFEGUARDS:

Add to end of entry 'Computerized data base is password protected and access is limited.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are transferred to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 when case is closed and then destroyed after 15 years.'

* * * * *

N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings.

SYSTEM LOCATION:

Naval Discharge Review Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 U.S.C. 1553, or whose discharge or dismissal has been or is being reviewed by the Naval Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the former member's application for review of discharge or dismissal, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Naval Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553 and E.O. 9397 (SSN).

PURPOSE(S):

Selected information is used to defend the Department of the Navy in civil suits filed against it in the State and/or Federal courts system. This information will permit officials and employees of the Board to consider former member's applications for review of discharge or dismissal and any subsequent application by the member; to answer inquiries on behalf of or from the former member or counsel regarding the action taken in the former member's case. The file is used by members of the Board for Correction of Naval Records when reviewing any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The file is used by counsel for the former member, and by accredited

representatives of veterans' organizations recognized by the Secretary, Department of Veterans Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Naval Discharge Review Board.

Officials of the Department of Justice and the United States Attorneys offices assigned to the particular case.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche; plastic recording disks; recording cassettes; and computerized data base.

RETRIEVABILITY:

Name, docket number, and/or Social Security Number.

SAFEGUARDS:

Files are kept within the Naval Discharge Review Board's administrative office. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards. Computerized data base is password protected and access is limited.

RETENTION AND DISPOSAL:

Files are transferred to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 when case is closed and then destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01900–2

SYSTEM NAME:

Navy Individual Service Review Board (ISRB) Proceedings Application File *(September 9, 1996, 61 FR 47489).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N01000–3'.

* * * * *

N01000–3

SYSTEM NAME:

Navy Individual Service Review Board (ISRB) Proceedings Application File.

SYSTEM LOCATION:

Bureau of Naval Personnel (Pers 324), 2 Navy Annex, Washington, DC 20370–3240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for military status and subsequent discharge from the United States Navy because they claim membership in a group which has been determined to have performed active military service with the United States Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for discharge, supporting documentation, copies of correspondence between the individual and the Navy ISRB and other correspondence concerning the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 95–202 and E.O. 9397 (SSN).

PURPOSE(S):

To consider the individual's application for military status and discharge.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

The files are kept within the Bureau of Naval Personnel offices. Access during business hours is controlled by Bureau personnel. Records not in use are maintained in a room which is locked during non-duty hours. The Bureau is secured at the close of business and the building in which the Bureau is located has limited access controlled by security guards.

RETENTION AND DISPOSAL:

Applications which are approved will necessitate creation of a service record which is part of the Navy Personnel Records System. Remaining records are retained in the Bureau of Naval Personnel for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the individual or those acting on the individual's behalf, from other military records and from the Department of Defense Civilian/Military Service Review Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04385–2

SYSTEM NAME:

Hotline Program Case Files *(February 22, 1993, 58 FR 10741).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05041–1'.

SYSTEM NAME:

Delete entry and replace with 'Inspector General (IG) Records.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any person who has been the subject of, witness for, or referenced in an Inspector General (IG) investigation, as well as any individual who submits a request for assistance or complaint to an Inspector General.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Letters/transcriptions of complaints, allegations and queries; tasking orders from the Department of Defense Inspector General, Secretary of the Navy, Chief of Naval Operations, and Commandant of the Marine Corps; requests for assistance from other Navy/Marine Corps commands and activities; appointing letters; reports of investigations, inquiries, and reviews with supporting attachments, exhibits and photographs; records of interviews and synopses of interviews; witness statements; legal review of case files; congressional inquiries and responses; administrative memoranda; letters and reports of action taken; referrals to other commands; letters to complainants and subjects of investigations; court records and results of nonjudicial punishment; letters and reports of adverse personnel actions; financial and technical reports.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 5014, Office of the Secretary of the Navy; 10 U.S.C. 5020, Naval Inspector General: details; duties; SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General, January 15, 1993.'

PURPOSE(S):

Delete entry and replace with 'To determine the facts and circumstances surrounding allegations or complaints against Department of the Navy personnel and/or Navy/Marine Corps activities.

To present findings, conclusions and recommendations developed from investigations and other inquiries to the Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, or other appropriate Commanders.'

* * * * *

STORAGE:

Delete entry and replace with 'File folders and computerized data base.'

RETRIEVABILITY:

Delete entry and replace with 'By subject's or complainant's name; case name; case number; and other case fields.'

SAFEGUARDS:

Delete entry and replace with 'Access is limited to officials/employees of the command who have a need to know. Files are stored in locked cabinets and rooms. Computer files are protected by software systems which are password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Permanent. Retired to Washington National Records Center when four years old. Transfer to the National Archives and Records Administration when 20 years old.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Complainants; witnesses; Members of Congress; the media; and other commands or government agencies.'

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete first paragraph and replace with 'Parts of this system may be exempt under 5 U.S.C. 552a(k)(1) and (k)(2), as applicable'.

N05041–1

SYSTEM NAME:

Inspector General (IG) Records.

SYSTEM LOCATION:

Office of the Naval Inspector General, Building 200, 901 M Street, SE, Washington DC 20374–5006; Inspector General offices at major commands and activities throughout the Department of the Navy and other naval activities that perform inspector general (IG) functions. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been the subject of, witness for, or referenced in an Inspector General (IG) investigation, as well as any individual who submits a request for assistance or complaint to an Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; tasking orders from the Department of Defense Inspector General, Secretary of the Navy, Chief of Naval Operations, and Commandant of the Marine Corps; requests for assistance from other Navy/Marine Corps commands and activities; appointing letters; reports of investigations, inquiries, and reviews with supporting attachments, exhibits and photographs; records of interviews and synopses of interviews; witness statements; legal review of case files; congressional inquiries and responses; administrative memoranda; letters and reports of action taken; referrals to other commands; letters to complainants and subjects of investigations; court records and results of nonjudicial punishment; letters and reports of adverse personnel actions; financial and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5014, Office of the Secretary of the Navy; 10 U.S.C. 5020, Naval Inspector General: details; duties; SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General, January 15, 1993.

PURPOSE(S):

To determine the facts and circumstances surrounding allegations or complaints against Department of the Navy personnel and/or Navy/Marine Corps activities.

To present findings, conclusions and recommendations developed from investigations and other inquiries to the Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, or other appropriate Commanders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computerized data base.

RETRIEVABILITY:

By subject's or complainant's name; case name; case number; and other case fields.

SAFEGUARDS:

Access is limited to officials/employees of the command who have a need to know. Files are stored in locked cabinets and rooms. Computer files are protected by software systems which are password protected.

RETENTION AND DISPOSAL:

Permanent. Retired to Washington National Records Center when four years old. Transfer to the National Archives and Records Administration when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Inspector General, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5006 or the local command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Inspector General, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Naval Inspector General, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants; witnesses; Members of Congress; the media; and other commands or government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions o 5 U.S.C. 552a(k)(1) and (k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05300–2

SYSTEM NAME:

Administrative Personnel Management System *(May 22, 1996, 61 FR 25639).*

CHANGES:

SSYSTEM IDENTIFIER:

Delete entry and replace with 'N05000–2'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records and correspondence needed to manage personnel and projects, such as Name, Social Security Number, date of birth, photo id, grade and series or rank/rate, etc., of personnel; location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.'

* * * * *

N05000–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI, 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel and projects, such as Name, Social Security Number, date of birth, photo id, grade and series or rank/rate, etc., of personnel; location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual

aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05300–4

SYSTEM NAME:

Personnel Management and Training Research Statistical Data System *(February 22, 1993, 58 FR 10751).*

CHANGES:

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access to building is controlled. Badge system is used to enter Center; 24 hour guard maintained on a fenced compound; control of visitors; data bank users having special access codes; and, access limited to only designated personnel.'

* * * * *

N05300–4

SYSTEM NAME:

Personnel Management and Training Research Statistical Data System.

SYSTEM LOCATION:

Commanding Officer, U.S. Navy Personnel Research and Development Center, 53335 Ryne Road, San Diego, CA 92152–7250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Navy and Marine Corps Personnel and applicants thereto: Active duty, reserve, prior service, dependents, retired, and Department of the Navy civilians from 1951 to present. (Only samples of data from each category are on file, depending on research study.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance, attitudinal, biographical, aptitude, vocational interest, demographic, physiological. Data in any file are limited, depending on purpose of the research study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

The data are used solely by Navy Personnel Research and Development Center researchers who analyze them statistically to arrive at recommendations to management on such topics as: Comparison of different training methods, selection tests, equipment designs, or policies relating to improving race relations and decreasing drug abuse. In no case are the data used for other than statistical purposes; that is, the data are not used in making decisions affecting specific individuals as individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, magnetic disk, and print.

RETRIEVABILITY:

Records are retrievable by name, Social Security Number, or service/file numbers, but such identifying information is used only to permit collation of data for statistical analysis, and is not used for retrieval of individual records.

SAFEGUARDS:

Access to building is controlled. Badge system is used to enter Center; 24 hour guard maintained on a fenced compound; control of visitors; data bank users having special access codes; and, access limited to only designated personnel.

RETENTION AND DISPOSAL:

Records are destroyed five years after termination of a research project. They are maintained within the confines of the Research Center. Destruction is accomplished by degaussing magnetic tapes and disks, and shredding paper products.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel and Organizational Assessment Department, Code 12, Navy Personnel Research and Development Center, 53335 Ryne Road, San Diego, CA 92152–7250.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Personnel and Organizational Assessment Department, Code 12, Navy Personnel Research and Development Center, 53335 Ryne Road, San Diego, CA 92152–7250.

Research Center files are organized by research study. To determine if Center files contain information concerning himself, an individual would have to specify time and place of participation in the research, unit to which attached at the time, and descriptive information about the study so that appropriate data may be located. For a personal visit, please contact the system manager.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Personnel and Organizational Assessment Department, Code 12, Navy Personnel Research and Development Center, 53335 Ryne Road, San Diego, CA 92152–7250.

Research Center files are organized by research study. To determine if Center files contain information concerning himself, an individual would have to specify time and place of participation in the research, unit to which attached at the time, and descriptive information about the study so that appropriate data may be located. For a personal visit, please contact the system manager.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source depends on purpose and nature of study: From the subjects themselves, educational institutions, supervisors, peers, instructors, spouses, and job sample tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05300–5

SYSTEM NAME:

Command Management Information System (CMIS) *(August 17, 1995, 60 FR 42854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05233-2'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 20, change the word 'work' to 'worked'.

* * * * *

N05233–2

SYSTEM NAME:

Command Management Information System (CMIS).

SYSTEM LOCATION:

Naval Computer and Telecommunications Station, Washington, 901 M Street, Southeast, Building 143, Washington Navy Yard, Washington, DC 20374–5069.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employee assigned military personnel, contractor personnel and those separated within the current five fiscal years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number, date of birth, home address, home telephone number, education level, sex, race or ethnic group. Other types of records integrated with personnel records include: (a) Status of travel orders during the previous fiscal year; (b) vehicle identification for parking control purposes; (c) manual privacy log containing a history of accesses made to any of the privacy protected data; (d) record of personnel actions issued; (e) training data extracted from the Individual Development Plan (IDP); (f) history of all promotions associated with employment at Naval Computer and Telecommunications Station (NAVCOMTELSTA) Washington; (g) listing of security accesses; (h) manpower costs for all personnel distributed by project and task; and (i) data relating to projects or endeavors that individuals have worked on. This data deals with costs and milestone monitoring.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 42 U.S.C. 2000e et seq.; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To manage personnel, monitor projects and manage financial data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk and on magnetic tape.

RETRIEVABILITY:

CMIS users obtain information by means of either a query or a request for a standard report. Personnel data may be indexed by any data item although the primary search key is the badge number.

SAFEGUARDS:

Access to building is protected by a Card Access System and uniformed guards requiring positive identification for admission. The computer room where data is physically stored is protected by a cipher lock. The system is protected by user account number and password sign-on, data base authority, set and item authority for list, add, delete, and update.

RETENTION AND DISPOSAL:

An individual's Personnel Master Data Set record is retained in the data base as long as they are actively employed with the Command. The on-line personnel data set is purged of all records of separated personnel at the end of each fiscal year. Historical data may be kept for five years on separate tape files and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resources Management Directorate (N1) NAVCOMTELSTA, Washington, 901 M Street, Southeast, Building 143, Washington Navy Yard, Washington, DC 20374–5069.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Resources Management Directorate (N1) NAVCOMTELSTA, Washington, 901 M Street, Southeast, Building 143, Washington Navy Yard, Washington, DC 20374–5069.

Individual should provide full name and signature of the individual concerned and his/her Social Security Number indicated on the letter. For personal visits, the individual should be able to provide some acceptable form of identification, i.e., driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Resources Management Directorate (N1) NAVCOMTELSTA, Washington, 901 M Street, Southeast, Building 143, Washington Navy Yard, Washington, DC 20374–5069.

Individual should provide full name and signature of the individual concerned and his/her Social Security Number indicated on the letter. For personal visits, the individual should be able to provide some acceptable form of identification, i.e., driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, from security agencies to which application for clearances have been made, and from agencies' various administrative departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07220–6

SYSTEM NAME:

Midshipman Pay System *(February 22, 1993, 58 FR 10803).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Military pay account records (Defense Joint Military Pay System).'

* * * * *

PURPOSE:

Delete entry and replace with 'To pay Naval Academy midshipmen.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is limited to Midshipmen Disbursing Office personnel; information is password protected; and access to computer area is restricted.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Midshipmen's service record.'

* * * * *

N07220–6

SYSTEM NAME:

Midshipman Pay System.

SYSTEM LOCATION:

Midshipmen Disbursing Office, U.S. Naval Academy, 101 Sands Road, Annapolis, MD 21402–5078;

Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2056;

Defense Finance and Accounting Service-Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000; and

Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Midshipmen of the U.S. Naval Academy, Annapolis, MD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military pay account records (Defense Joint Military Pay System).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To pay Naval Academy midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Internal Revenue Service and the Social Security Administration for reporting wages, FICA tax and federal tax paid.

To the American Red Cross, Navy Relief Society, and U.S.O. for personal assistance to the member.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized and microfiche records.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Access is limited to Midshipmen Disbursing Office personnel; information is password protected; and access to computer area is restricted.

RETENTION AND DISPOSAL:

Records are maintained for six years and three months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Midshipmen Disbursing Office, U.S. Naval Academy, 101 Sands Road, Annapolis, MD 21402–5078;

Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2056; and

Defense Finance and Accounting Service-Denver Center, 6760 East

Irvington Place, Denver, CO 80279–5000.

NOTIFICATION PROCEDURE:

Individuals can be informed of any records maintained in the system by identifying themselves to Midshipmen Disbursing Office, U.S. Naval Academy, 101 Sands Road, Annapolis, MD 21402–5078.

Requesters should include their full name and Social Security Number in their request.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Midshipmen Disbursing Office, U.S. Naval Academy, 101 Sands Road, Annapolis, MD 21402–5078 or visit the Midshipmen Disbursing Office. Individual must present his/her identification card to obtain the requested information.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Midshipmen's service record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12593–1

SYSTEM NAME:

Living Quarters and Lodging Allowance *(February 22, 1993, 58 FR 10820).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Civilian Overseas Quarters and Lodging Allowances.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To record civilian overseas employee's living quarters and/or temporary lodging allowance entitlement.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations and E.O.s 9397 (SSN), 10903, 10970, 10853, and 10982.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access provided on need to know basis only. Access to computerized and manual records is limited he control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Access to computerized data base is password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are retained for four years and then destroyed.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual and official personnel file.'

* * * * *

N12593–1

SYSTEM NAME:

Civilian Overseas Quarters and Lodging Allowances.

SYSTEM LOCATION:

Overseas organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Appropriated and non-appropriated fund U.S. civilian employees eligible for allowance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, grade, address, rent and utility expenses, living quarters and lodging allowance, and name of family and/or members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O.s 9397 (SSN), 10903, 10970, 10853, and 10982.

PURPOSE(S):

To record civilian overseas employee's living quarters and/or temporary lodging allowance entitlement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials of the Department of State for the purpose of monitoring the level of allowances that Navy is authorized.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on need to know basis only. Access to computerized and manual records is limited he control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Access to computerized data base is password protected.

RETENTION AND DISPOSAL:

Files are retained for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Overseas commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Commanding Officer at the overseas activity where he or she is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Requester should include full name, Social Security Number, and dates assigned to the activity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer at the overseas activity where he or she is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Requester should include full name, Social Security Number, and dates assigned to the activity.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and official personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–6746 Filed 3–17–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comments requested.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 1998–99 award year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs). The Secretary is particularly seeking comments regarding whether all the questions on the FAFSA are needed. The Secretary will consider these comments not only for the 1998–99 FAFSA but also in the design of the 1999–2000 FAFSA.

DATES: Interested persons are invited to submit comments on or before May 19, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, ''in cooperation with agencies and organizations involved in providing student financial assistance,'' to ''produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under'' the Title IV, HEA Programs. This form is the FAFSA. In addition, section 483 authorizes the Secretary to include on the FAFSA up to eight non-financial data items that would assist States in awarding State student financial assistance.

Over the past several years, the Secretary, in cooperation with the above described agencies and organizations, has added questions to the form. Those questions were added to accommodate the needs of States that administer State student aid programs, and of institutions of higher education that administer the Title IV, HEA Programs. They were also added to facilitate eliminating or reducing the number of State and institutional forms that a student and his or her family must complete in order to receive student financial assistance.

In the context of re-engineering the FAFSA and looking at each FAFSA question anew, it appears that a great many of the questions now on the form are not needed to determine a student's need and eligibility for Title IV, HEA Programs. Moreover, it also appears that many questions are of a marginal value, even for State and institutional purposes.

The 1998–99 FAFSA will begin to be used on January 1, 1998. Because of the lead time needed to begin using that form on that date, the Secretary has proposed to modify or eliminate only a minimum number of questions of the proposed 1998–99 FAFSA. Using the 1996–97 and 1997–98 FAFSAs as a reference point, the Secretary proposes eliminating question 37. The Secretary proposes to combine questions 20 and 21 into a single yes/no question, as follows: ''Will you have received a high school diploma or earned a GED before the first date of your enrollment in college?'' The Secretary proposes to eliminate the ''day'' in questions 12, 31, and 50 leaving just the ''month'' and ''year.'' Finally, the Secretary proposes to eliminate the fourth option under ''housing codes'' on page four of the FAFSA. The Secretary seeks comments on these modifications.

With regard to the 1999–2000 FAFSA, using the 1996–97 and 1997–98 FAFSAs as a reference point, the Secretary notes that a student does not need to complete the following questions in order to have his or her eligibility and need for Title IV, HEA Programs determined: 11–14, 18, 20–39, 50, 53–54, 65–66, and 92-105. Therefore the Secretary requests comments on the need and desirability of these questions.

In particular, the Secretary requests comments on whether a particular question is integral to a State student aid program, and requests each State to list in order of importance, those questions that it needs to administer its State student aid programs.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under the procedure for obtaining approval from OMB, ED must first obtain public comment on the proposed form, and to obtain that comment, ED must publish this notice in the Federal Register.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 12, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 9,831,756.

Burden Hours: 7,625,993.

Abstract: The FAFSA collects identifying and financial information about a student and his or her family if the student applies for Title IV, Higher Education Act (HEA) Program funds.

This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility and need for State and institutional financial aid programs.

[FR Doc. 97–6742 Filed 3–17–97; 8:45 am]

BILLING CODE 4000–01–P

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 12, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Combined Application for the Talent Search and Educational Opportunity Centers Program.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 40,800.

Abstract: The application form is needed to conduct a national competition for program years 97–98 for the Talent Search and the Educational Opportunity Centers. These programs provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies and, in exceptional cases, secondary schools to establish and operate projects designed to provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and assist individuals to apply for admission to institutions that offer programs of postsecondary education.

[FR Doc. 97–6743 Filed 3–17–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Site Services Division; Notice of Availability of a Cooperative Agreement Solicitation for the History of the Savannah River Site

AGENCY: U.S. Department of Energy (DOE), Savannah River (SR) Office.

ACTION: Notice of Availability of a Cooperative Agreement Solicitation.

SUMMARY: The U.S. Department of Energy (DOE) at SR is announcing the availability of a cooperative agreement solicitation for the history of the Savannah River Site (SRS). The SRS is approaching its fiftieth anniversary and is currently involved in closing old production facilities and related environmental restoration of these facilities. The solicitation was made available on February 28, 1997; applications are due March 28, 1997.

SUPPLEMENTARY INFORMATION: As a matter of legacy and education, it is important that Savannah River capture the technical history of the old production facilities, related artifacts, and the technology developed at SRS from the inception of the site in the early 1950's to the present time.

The purpose of this solicitation is to establish a mechanism to research, develop and preserve the mission (nuclear materials production) history of SRS, and to provide a product tool to be used for continual education and public information purposes.

The participant will conduct a three-phased project to record and preserve the history of the SRS. Phase One will involve a survey of structures and artifacts of historic significance at SRS including photographs and documents, development of criteria for determining historic significance, and the recording of oral histories from scientists and engineers associated with the development of nuclear energy at SRS. Phase Two will require the gathering, archiving and storage of those items identified in the Phase One survey. Phase Three will consist of the preparation and submission of an electronic narrative of the site history and recommendations for archival and future use of the artifacts, documents, photographs and personal narratives.

All phases of this project must be carried out in concert and with the objective of compiling a site history that evaluates and determines the significance of SRS' role in the Cold War and provides recommendations for nomination of various site buildings and structures to the National Register of Historic Places including recommendations for meeting

nomination guidelines under Section 106 of the National Historic Preservation Act.

The project should be conducted with input from experts in the various professional disciplines involved in the development and operation of the SRS and led by historians whose area of expertise includes twentieth century military/industrial development in the United States.

Those who submitted an Expression of Interest (EOI) in response to the Department's August 1996 request for EOI's will automatically receive a copy of the solicitation. Requests for copies of the solicitation should be received in writing or be transmitted via facsimile to (803) 725–8573 no later than close of business (4:00 p.m. Eastern Standard Time) March 14, 1997. Requests or notifications should be sent to Ms. Angela M. Sistrunk, Contracts Management Division, U.S. Department of Energy, P.O. Box A, Aiken, SC 29802. Telephonic requests will not be accepted.

Issued in Aiken, SC, on March 4, 1997.

Ronald D. Simpson,

Head of Contracting Activity Designee, Contracts Management Division, Savannah River Operations Office.

[FR Doc. 97–6782 Filed 3–17–97; 8:45 am]

BILLING CODE 6450–01–P

Office of the Secretary

Privatization Working Group: Notice of Availability of the Report of the Privatization Working Group

AGENCY: Office of the Secretary, Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Privatization Working Group, established by the Secretary of Energy to examine how privatization could help the Department utilize its resources more efficiently, has completed its work and provided its recommendations to the Secretary. This notice announces the availability of the Working Group's report entitled, ''Harnessing the Market: The Opportunities and Challenges of Privatization'' Report #DOE/S–0120. It also requests the views of the public on the policy, principles, and recommendations contained therein.

DATES: Comments should be submitted on or before May 19, 1997.

ADDRESSES: Written comments on Report # DOE/S–0120 should be sent to: The Office of the Executive Secretariat, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW, Room 7E–054, Washington, DC 20585.

Copies of this report, #DOE/S–0120 may be ordered from the Public Inquiries Office, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW, Room 1E–206 or by calling (202) 586–5575.

The report is also available on the Internet at: http://www.doe.gov/privatization/report.

Additionally, this report is available for inspection in the Public Reading Rooms at DOE Headquarters and in the Department's primary field offices. The locations and telephone numbers of these Reading Rooms are:

U.S. Department of Energy, Public Reading Room, 1000 Independence Ave., Room 1E–090, SW, Washington, DC 20585 (202) 586–5955

National Atomic Museum, Public Reading Room, 20358 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117, 505–845–4378, Attn: Diane Zepeda

Chicago Operations Office, Public Reading Room, 9800 South Cass Avenue, Argonne, IL 60439, 630–252–2010, Attn: Sandra Geib

Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415, 208–526–1144, Attn: Gail Wilmore

Nevada Operations Office, Public Reading Room, 2621 Losee Rd. Bldg. B–3 Mail Stop 548, Las Vegas, NV 89030, 702–295–1628, 702–295–1128, Attn: Janet Fogg

Oak Ridge Operations Office, Public Reading Room, Federal Building, 200 Administration Road, Oak Ridge, TN 37830, 423–576–1216, Attn: Jane Greenwalt

Oakland Operations Office, Public Reading Room-Room 1H/EIC, 1301 Clay Street, Oakland CA 94612, 510–637–1794, Attn: Lauren Noble

U.S. Department of Energy, Public Reading Room, University of South Carolina-Aiken, 171 University Parkway, Second Floor Library, Aiken, SC 29801, 803–725–1408, Attn: Pauline Conner

U.S. Department of Energy, Public Reading Room, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342, 513–865–3174, Attn: Cindy Franklin-1st Floor

U.S. Department of Energy, Public Reading Room, Richland Operations, 100 Sprout Road, Richland, WA 99352, 509–376–8583, Attn: Terri Traub

FOR FURTHER INFORMATION CONTACT: The Contract Reform Project Office, U.S. Department of Energy, room GA–155, Washington, DC 20585 (202) 586–0800, or the individual site offices as designated below:

Albuquerque Operations Office—Jim Hoyal (505) 845–5751

Chicago Operations Office—Jerry Zimmer (630) 252–2129

Federal Energy Technology Center—Carroll Labton (412) 892–6199

Golden Field Office—Jeff Baker (303) 275–4785

Idaho Operations Office—Jan Chavez (208) 526–5968

Nevada Operations Office-Rick Betteridge (702) 295–0520

Oak Ridge Operations Office—Steven Wyatt (423) 576–0885

Oakland Operations Office—Jim Hirahara (510) 637–1658

Ohio Field Office—Pete Greenwald (937) 865–3862

Richland Operations Office—Lief Erickson (509) 376–7272

Rocky Flats Field Office—Jeff Kerridge (303) 966–2866

Savannah River Operations Office—Chris Van Horn (803) 725–5313

SUPPLEMENTARY INFORMATION: Former Secretary of Energy, Hazel R. O'Leary, initiated a broad slate of strategic and managerial reform initiatives to transform the Department to better meet the challenges of the 21st Century. The reports that support these reforms consistently identified privatization as a potentially powerful management tool to enable institutional change. In recognition of this and in support of the Clinton Administration's commitment to a government that works better and costs less, the Secretary formed the Privatization Working Group to examine how privatization could help transform DOE.

The report of the Working Group, Harnessing the Market: The Opportunities and Challenges of Privatization, provides an analysis of the major issues that affect privatization within the Department of Energy. The report includes 13 case studies that explore actual DOE privatization efforts over the past two years. Additionally, it summarizes the key legal authorities that govern each of the three types of privatization opportunities discussed in the report. Finally, the report makes a series of recommendations and outlines accompanying actions that will help the Department seize the opportunities presented by privatization and confront its challenges. The report stresses that when wisely considered and carefully implemented, privatization is a powerful strategic management tool.

The Department is interested in the views of stakeholders on the report's recommendations and action items.

Issued in Washington, DC on March 12, 1997.

Dan W. Reicher,

Chief of Staff, Department of Energy.

[FR Doc. 97–6780 Filed 3–17–97; 8:45 am]

BILLING CODE 6450–01–P

Office of General Counsel

Unfunded Mandates Reform Act; Intergovernmental Consultation

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of final statement of policy.

SUMMARY: The Department of Energy (DOE) today publishes a final statement of policy on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995. The policy reflects the guidelines and instructions that the Director of the Office of Management and Budget (OMB) provided to each agency to develop, with input from State, local, and tribal officials, an intergovernmental consultation process with regard to significant intergovernmental mandates contained in a notice of proposed rulemaking.

EFFECTIVE DATE: This policy is effective March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Steve Duarte, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Section 203 of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1533, requires that, prior to establishing regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. Section 204(a) of the Act requires each agency to develop, to the extent permitted by law, an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments in the development of a regulatory proposal containing a proposed ''significant intergovernmental mandate'' that is not a requirement specifically set forth in law. 2 U.S.C. 1531, 1534(a).

A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that: (1) Would impose an enforceable duty upon State, local, or tribal governments (except as a condition of Federal assistance); and (2) may result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. See 2 U.S.C. 658(5)(A)(i), 1532(a). The Act defines ''small government'' to mean any small governmental jurisdiction defined in the Regulatory Flexibility Act, 5 U.S.C. 601(5), and any tribal government. 2 U.S.C. 658(11).

In January 1996, DOE published a notice of a proposed policy to implement this portion of the Act and the OMB guidelines and instructions published on September 29, 1995 (60 FR 50651) that deal with the intergovernmental consultation process. DOE sought public comment on the proposed policy in order to give State, local and tribal officials, as well as members of the public, an opportunity to comment on the policy before it was finalized. DOE received comments from one commenter. The DOE reviewed the comments and has determined to finalize the proposed policy with the modifications as described below.

The commenter suggested that indirect notification to local elected officials (or their designees) through the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors may not provide notification to those local elected officials who are not members of these national organizations. The commenter suggested that DOE also notify the State Municipal Leagues. DOE has decided to implement this suggestion in the following manner. DOE understands that a number of the State Municipal Leagues are members of, and are represented by, one or another of the named national organizations. DOE will notify directly the State Municipal Leagues that are not otherwise represented by one of the named national organizations.

The commenter suggested that, in determining if an unfunded mandate triggers the $100 million threshold, the DOE should not discount future costs to present value. After consulting with OMB, DOE has accepted this suggestion.

The commenter also suggested that DOE open the consultation process whenever a DOE rule would create an unfunded mandate, without regard for the cost of the mandate. DOE has not accepted this suggestion because the Act provides otherwise, and in any event, issues about a proposed mandate could be presented during the comment period provided in the notice of proposed rulemaking. The Act assigns to the agency the obligation to assess the effects of Federal regulatory actions on State, local and tribal governments. 2 U.S.C. 1531. The Act requires that the agency permit State, local, and tribal governments to provide input in the development of regulatory proposals when the regulatory proposals contain significant Federal intergovernmental mandates. 2 U.S.C. 1534. If the agency finds that the unfunded mandate does not rise to the level of a ''significant intergovernmental mandate'' under the Act, then the consultation process is not required. However, such a finding would not preclude a State, local, or tribal government from commenting in a public hearing or in a meeting with agency officials on a proposed intergovernmental mandate that is below the threshold of a ''significant intergovernmental mandate.'

Finally, the commenter suggested that DOE create a review process whereby local government officials can petition to have DOE's threshold determination reviewed by a ''neutral party.'' DOE has not accepted this suggestion because the Act specifically provides for judicial review. 2 U.S.C. 1571.

In accordance with section 801 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 801, DOE will report to Congress the promulgation of this Statement of Policy prior to its effective date.

Issued in Washington, DC, on March 11, 1997.

Mary Anne Sullivan,

Acting General Counsel.

On the basis of the foregoing, DOE adopts the following Statement of Policy:

Statement of Policy on the Process for Intergovernmental Consultation Under the Unfunded Mandates Reform Act of 1995

I. Purpose

This Statement of Policy implements sections 203 and 204 of the Unfunded Mandates Reform Act of 1995 (Act), 2 U.S.C. 1533, 1534, consistent with the guidelines and instructions of the Director of the Office of Management and Budget (OMB).

II. Applicability

This Statement of Policy applies to the development of any regulation (other than a regulation for a financial assistance program) containing a significant intergovernmental mandate under the Act. A significant intergovernmental mandate is a mandate that: (1) Would impose an enforceable duty upon State, local, or tribal governments (except as a condition of Federal assistance); and (2)

may result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. DOE officials may apply this Statement of Policy selectively if there is an exigent need for immediate agency action that would warrant waiver of prior notice and opportunity for public comment under the Administrative Procedure Act, 5 U.S.C. 553.

III. Intergovernmental Consultation

When to begin. As early as possible in the development of a notice of proposed rulemaking (for other than a financial assistance program) that involves an enforceable duty on State, local, or tribal governments, the responsible Secretarial Officer, with the concurrence of the Assistant Secretary for Policy and the General Counsel, should estimate whether the aggregate compliance expenditures will be in the amount of $100 million or more in any one year. In making such an estimate, the Secretarial Officer ordinarily should adjust the $100 million figure in years after 1995 using the Gross Domestic Product deflator as contained in the Annual Report of the Counsel of Economic Advisors which is part of the Economic Report of the President.

Content of notice. Upon determining that a proposed regulatory mandate on State, local, or tribal governments may be a significant intergovernmental mandate, the Secretarial Officer responsible for the rulemaking should provide adequate notice to pertinent State, local and tribal officials: (1) Describing the nature and authority for the rulemaking; (2) explaining DOE's estimate of the resulting increase in their governmental expenditure level; (3) inviting them to participate in the development of the notice of proposed rulemaking by participating in meetings with DOE or by presenting their views in writing on the likely effects of the regulatory requirement or legally available policy alternatives that DOE should take into account. If DOE publishes an advance notice of proposed rulemaking, then these issues may be addressed in that advance notice.

How to notify State and tribal officials. With respect to State and tribal governments, actual notice should be given by letter, using a mailing list maintained by the DOE Office of Intergovernmental and External Affairs that includes elected chief executives (or their designees), chief financial officers (or their designees), the National Governors Association, and the National Congress of American Indians. The Secretarial Officer also should provide notice in the Federal Register.

How to notify local officials. With respect to local governments, the Secretarial Officer should provide notice through the Federal Register and by letter to the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and any State Municipal League not represented by a national association. If a significant intergovernmental mandate might affect local governments in a limited area of the United States, then the Secretarial Officer, in consultation with the Office of Intergovernmental and External Affairs, should give actual notice by letter to appropriate local officials if practicable.

Exemption from the Federal Advisory Committee Act. Secretarial Officers are encouraged to meet with State, local, and tribal elected officials (or their designees) to exchange views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. Section 204(b) of the Act, 2 U.S.C. 1534(b), exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings for this purpose that do not include other members of the public.

Small government consultation plan. If the proposed regulatory requirements might significantly or uniquely affect small governments, then the Secretarial Officer should summarize in the Supplementary Information section of the notice of proposed rulemaking its plan for intergovernmental consultation under section 203 of the Act. Unless impracticable, the plan should provide for actual notice by letter to potentially affected small governments.

Documenting compliance. The Supplementary Information section of any notice of proposed and final rulemaking involving a significant intergovernmental mandate upon State, local, or Indian tribal governments should describe DOE's determinations and compliance activities under the Act. The Supplementary Information section of the notice of proposed rulemaking should describe the estimated impact of an intergovernmental mandate, the assumptions underlying its calculation, and the resulting determination of whether the rulemaking involves a significant intergovernmental mandate. It should discuss, as appropriate, cost and benefit estimates and any reasonable suggestions received during pre-notice intergovernmental consultations. Any substantive pre-notice written communications should be described in the Supplementary Information and made available for inspection in the public rulemaking file in the DOE Freedom of Information Reading Room.

Reporting. Pursuant to the OMB guidelines and instructions, the Office of General Counsel, with the cooperation of the Secretarial Officers, will prepare the annual report to OMB on compliance with the intergovernmental consultation requirements of the Act (initially due on January 15, 1996, and annually on January 15 thereafter).

[FR Doc. 97–6781 Filed 3–17–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–10–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 7, 1997, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheet in the above captioned docket, with a proposed effective date of April 1, 1997.

ESNG states that the purpose of this instant filing is to ''track'' Transcontinental Gas Pipe Line Corporation's (Transco) revised fuel retention percentages for injecting gas into storages (see Transco's Seventh Revised Sheet No. 29) proposed to be effective April 1, 1997.

ESNG states that copies of the filing have been served upon its 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 D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6760 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–24–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 3, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheet, with an effective date of April 1, 1997:

Eighth Revised Sheet No. 6

Equitrans states that this filing constitutes its second annual products extraction rate adjustment filing under Section 32 of the General Terms and Conditions of its FERC Gas Tariff. By this filing, Equitrans proposes an adjusted extraction rate of $0.2004/Dth for the prospective 12-month period beginning April 1, 1997. Equitrans states that this represents a reduction from the $0,2015/Dth rate which was approved by the Commission in 1996. In calculating the current rate, Equitrans states that it utilizes actual extraction billings and actual plant throughout for the 12 months ended December 31, 1996, adjusted for anticipated activity during 1997, all as more fully set forth in the filing.

Any person desiring to be heard 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 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. 97–6761 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–198–002]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 7, 1997, Gulf States Transmission Corporation (GSTC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets to be effective December 31, 1996.

GSTC states that the purpose of the filing is to comply with the Commission's letter order issued February 5, 1997 in Docket No. RP97–198–001.

GSTC states that it has modified its tariff to (i) replace the term ''case reservation rate'' with ''base reservation rate'' on Tariff Sheet No. 58G, (ii) reflect that its discounted policy is applicable also to GSTC's interruptible rates, (iii) modify Tariff Sheet No. 58G to correctly reflect Original Volume No. 1 instead of First Revised Volume No. 1, and (iv) change the requested effective date to December 31, 1996.

GSTC states that copies of the filing are being mailed to its jurisdictional customers and interested states regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6775 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–131–000]

KO Transmission Company; Notice of Tariff Filing

March 12, 1997.

Take notice that on March 4, 1997, KO Transmission Company (KO Transmission) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet bearing a proposed effective date of April 1, 1997.

Second Revised Sheet No. 10

KO Transmission states that the purpose of the filing is to revise its fuel retainage percentage consistent with Section 24 of the General Terms and Conditions of its Tariff. According to KO Transmission, Columbia Gas Transmission Corporation (Columbia) operates and maintains the KO Transmission facilities pursuant to the Operating Agreement referenced in its Tariff at Original Sheet No. 7. Pursuant to that Operating Agreement, Columbia retains certain volumes associated with gas transported on behalf of KO Transmission. On March 4, 1997, Columbia notified KO Transmission that under the terms of the Operating Agreement KO Transmission will be subject to a 0.46% retainage. Accordingly, KO Transmission states that the instant filing tracks this fuel percentage.

Any person desiring to be heard 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 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. 97–6762 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–281–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 7, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective April 7, 1997:

1st Rev Seventh Revised Sheet No. 1
Seventeenth Revised Sheet No. 24
First Revised Sheet No. 1414
Third Revised Sheet No. 3200
Fourth Revised Sheet No. 5200

Koch states that the above referenced tariff sheets are being filed to reflect

minor administrative and typographical corrections to its Fifth Revised Volume No. 1 FERC Gas Tariff.

Koch also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

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 as provided by § 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 part 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. 97–6766 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–54–001]

Louisiana Nevada Transit Company; Notice of Refund Report

March 12, 1997.

Take notice that on February 28, 1997, Louisiana Nevada Transit Company (LNT) filed a refund report in Docket No. TM97–1–54–000. LNT states that the filing and refunds of Annual Charges Adjustment (ACA) surcharges were made in compliance with the Commission's Order of January 14, 1997 in the referenced Docket. LNT states that refunds were disbursed to its jurisdictional customers on February 13, 1997.

LNT states that: (1) no refunds were disbursed for the period October 1, 1992 through September 30, 1996, because all jurisdictional transportation was discounted below LNT's maximum transportation rate, at a discount level greater than the $0.0023 per Mcf surcharge amount; (2) refunds for the period October 1, 1995 through September 30, 1996 in the amount of $155.57 including interest calculated in accordance with 18 CFR 154.501(d), were paid to Arkla, A Division of NorAm Energy Corporation (Arkla) for transportation services performed from March 1, 1996 through September 30, 1996 for all ACA surcharge amounts collected above the Commission-approved rate of $0.0023 per Mcf; and (3) refunds for the period October 1, 1996 through December 31, 1996 in the amount of $128.01 including interest calculated in accordance with 18 CFR 154.501(d), were paid to Arkla for transportation services performed during that period for all ACA surcharge amounts collected above the Commission-approved rate of $0.0020 per Mcf.

LNT further states that copies of its refund report filing have been served on all affected 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, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 19, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6763 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–199–000]

Mississippi River Transmission Corporation; Notice of Informal Settlement Conference

March 12, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on March 20, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purposes of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Kathleen M. Dias at (202) 208–0524 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6773 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–64–003]

Natural Gas Pipeline Company of America; Notice of Withdrawal

March 12, 1997.

Take notice that on March 7, 1997, Natural Gas Pipeline Company of America (Natural) withdrew the following tariff sheets that had been submitted with its compliance filing in the captioned docket on February 28, 1977:

Fourth Revised Sheet Nos. 11 through 13
Fifteenth Revised Sheet No. 14
Third Revised Sheet No. 18

Natural states that the changes to these tariff sheets had been included in Natural's filing in Docket No. RP97–64–000 on November 1, 1996. However, the Federal Energy Regulatory Commission had stated in its order in this docket issued December 23, 1996, that Natural should not make the proposed changes to these sheets in this proceeding. Natural states it inadvertently included these sheets in the February 28, 1997 filing.

Natural states that copies of its letter withdrawing the sheets has been served on all those who received the February 28, 1997 filing.

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 as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6774 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–283–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 7, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective April 6, 1997.

Panhandle states that the purpose of this filing is to: (1) Reflect certain changes to Section 12.11(h) of the General Terms and Conditions concerning the Daily Scheduling Charges and various references in the Forms of Service Agreement which evolve from Panhandle's implementation of the standards promulgated by the Gas Industry Standards Board which the Commission adopted in Order Nos. 587, 587–A, and 587–B; (2) clarify Section 3 of Rate Schedule SCT, Small Customer Transportation Service, as it relates to the basis of billing for services rendered under that Rate Schedule; (3) modify the provisions of Rate Schedule FS, Flexible Storage Service to allow shippers additional flexibility to tailor the allowable injection and withdrawal periods to suit their individual needs; and (4) modify the provisions of Rate Schedule GDS, General Delivery Service, to allow shippers, under certain circumstances, to designate a Service Agreement under Rate Schedule FS as the storage service which supports its Rate Schedule GDS service.

Panhandle states that copies of this filing are being served on all jurisdictional customers and applicable state regulatory agencies.

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 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. 97–6764 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–131–000]

Panhandle Eastern Pipe Line Company; Notice of Application

March 12, 1997.

Take notice that on November 27, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–131–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations for authorization to abandon by sale certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon by sale to Cherokee Pipe and Service Company, Inc. (Cherokee) approximately 17.1 miles of 22 inch pipeline and appurtenant facilities located in Beaver County, Oklahoma and Seward County, Kansas. Panhandle states that the subject facilities which were decommissioned in accordance with a Commission order issued on September 19, 1990 in Docket No. CP90–681–000, will be sold in place. Panhandle further states that the sale price for the subject facilities is $166,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 2, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is file within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6769 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–280–000]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 5, 1997, Petal Gas Storage Company (Petal) tendered for filing as part of its FERC Gas Tariff, Pro Forma First Revised Volume No. 1, a number of tariff sheets to become effective June 1, 1997.

Petal states that this filing is made in compliance with Order No. 587, issued in Docket No. RM96–1–000 on July 17, 1996. These pro forma tariff sheets reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices—nominations, flowing gas (allocations, balancing, and measurement), invoicing, and capacity release, except where waiver is requested.

Petal states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed by on or before March 26, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6767 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–264–000]

Shell Gas Pipeline Company; Notice of Petition for Waiver

March 12, 1997.

Take notice that on February 28, 1997, Shell Gas Pipeline Company (Shell) tendered for filing a petition for an interim waiver of Commission Order No. 587–B issued January 30, 1997 in Docket No. RM96–1–003.

Shell states that it has entered into an agreement with Southern Natural Gas Company (Southern) for the use of the SoNet electronic bulletin board system. Southern is in the process of developing a new system which should be available September 1, 1997.

Shell requests waiver of Order No. 587–B to extend the deadline to allow Shell to implement the requirements of Order No. 587–B in conjunction with the start-up of Southern's new computer system.

Shell states that copies of the filing has been served on all shippers and interstate commissions of Shell.

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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests must be filed on or before March 19, 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. 97–6768 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–132–003]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 6, 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 to become effective April 7, 1997:

Second Revised Sheet No.140a
Third Revised Sheet No. 141

Southern states that its filing is in compliance with the Commission's February 19, 1997 Order on Rehearing and Clarification directing Southern to file revised tariff sheets consistent with its order and to file any objections to posting daily net system imbalances.

Southern states that copies of the filing will be served upon all parties designated on the official service list compiled by the Secretary in these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6772 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–282–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1997.

Take notice that on March 7, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets identified on Appendix A attached to the filing proposed to be effective April 6, 1997.

Trunkline states that this filing, which is made in accordance with the provisions of Section 154.204 of the Commission's Regulations, modifies Trunkline's FERC Gas Tariff, first Revised Volume No. 1 to: (1) revise Section 2.4 of Rate Schedule NNS–1 to add Service Agreements under Rate Schedules SST and LFT as Service Agreements which a Shipper may specify as a Designated Transportation Service Agreement; (2) modify Section 2.5 of Rate Schedule NNS–1 to remove the limitation that an Eligible Point of Delivery must be one at which Trunkline previously provided sales service, thus making all Delivery Points available for No Notice Service; and (3) amend Article 6 of the Operational Balancing Agreement (OBA) Form of Service Agreement to provide that OBAs will continue in effect until terminated by Trunkline or the OBA Party upon at least thirty days written notice.

Trunkline states that copies of this filing are being served on all jurisdictional customers and applicable state regulatory agencies.

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 97–6765 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP97–279–000, CP97–280–000 and CP97–281–000]

Warren Transportation, Inc.; Notice of Application

March 12, 1997.

Take notice that on March 7, 1997, Warren Transportation, Inc. (WTI), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed an application pursuant to Sections 7(c) of the Natural Gas Act, and Part 157, Subpart A and F, and Part 284, Subpart G, of the Commission's Regulations for certificates of public convenience and necessity, all as more fully set forth in the application on file with the Commission and open to public inspection.

WTI requests that the Commission authorize: (1) the acquisition of 27 miles of 16″ diameter interstate pipeline (known as the ''Rodman (Enid) 16-inch Pipeline''), located Alfalfa, Major and Garfield Counties, Oklahoma, from Williams Natural Gas Company (Williams); (2) jurisdictional transportation rates; (3) self-implementing interstate transportation of natural gas under a Part 284, Subpart G blanket transportation certificate; and (4) self-implementing ''routine activities'' under a Part 157, Subpart F blanket certificate.

WTI states it is holding a 30 day non-discriminatory ''open season'' to assure that each and every potential shipper of residue gas at the Rodman plant is apprised of this acquisition from Williams and upcoming open access operation of the Rodman (Enid) 16-inch pipeline. This form of public notice announces this open season process, which commences on the date of its issuance.

WTI states it does not expect oversubscription from this open season, but would allocate firm capacity, in the event of oversubscription, based on the net present value procedure common for interstate pipeline open seasons. Specifically, subscriptions for firm capacity will be required to state both the transportation rate the shipper is willing to pay (up to the maximum reservation rate as stated in Exhibit P to the application) and the term of service sought. WTI states there should that be any oversubscription, WTI will then rank all prospective firm shippers in order of the highest net present value to WTI; that is, the bid price and term of each subscription will be multiplied to give the total projected revenues per unit of capacity, which in turn will be discounted to the present under standard DCF methodology.

Any prospective shipper interested in subscribing for service should contact the following WTI representative for a subscription form: Timothy P. Balaski, Warren Transportation, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, (713) 507–6523 (telephone), (713) 507–6515 (telefax).

Any person desiring to be heard or to make any protest with reference to said application should on or before March 27, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WTI to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6771 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–272–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

March 12, 1997.

Take notice that on February 27, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–272–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain lateral pipeline facilities, meters and associated equipment, all located in Washington County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82–479–000 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.

WNG proposes to abandon by sale to Western Resources, Inc. (WRI) approximately 2.4 miles of its 6-inch Dewey lateral pipeline, domestic meters, other equipment and related service. It is stated that the facilities were installed in 1974 at a cost of $271,571 and that the facilities have a salvage value of $10 and that the cost to reclaim them is $1,572. It is asserted that the customers served through these facilities have agreed to the abandonment and would continue to receive service from WRI. It is explained that the sale would enable WRI to expand its local distribution system. It is further asserted that WNG has sufficient capacity to render its services following the proposed abandonment without detriment or disadvantage to its other existing customers and that its tariff does not prohibit such a change.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6770 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 459–086, et al.]

Hydroelectric Applications [Union Electric Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Amendment of Recreation Plan.

b. *Project No.:* 459–086.

c. *Date Filed:* November 21, 1996.

d. *Applicant:* Union Electric Company.

e. *Name of Project:* Osage Project.

f. *Location:* Bagnell Dam is on Lake of The Ozarks in Benton County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant contact:* Dan Jarvis, Route 3, Box 234, Eldon, MO 65026, (573) 365–9322.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Comment date:* April 14, 1997.

k. *Description of the Application:* Union Electric Company proposes to end its Tour-of-the-Dam program and replace it with an Educational and Historical Information Facility at Willmore Lodge located near the dam. The new educational facility would contain a multimedia interactive display that would provide historical information about Bagnell Dam and educate the public about the benefits of hydropower.

This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 7297–002.

c. *Date Filed:* February 24, 1997.

d. *Applicant:* City of Buena Park.

e. *Name of Project:* OC–17 Hydroelectric Generation Facility.

f. *Location:* Feeder Station 423+63, Orange County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)—825(r).

h. *Applicant Contact:* Don Jenson, 6650 Beach Blvd., Buena Park, CA, (714) 562–3500.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* April 14, 1997.

k. *Description of Application:* The exemptee states that the generating unit was removed from service and the project is no longer operational.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

3a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 184.

c. *Date filed:* February 24, 1997.

d. *Submitted By:* Pacific Gas and Electric Company, current licensee.

e. *Name of Project:* El Dorado.

f. *Location:* On the South Fork American River, in El Dorado, Alpine, and Amador Counties, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* December 1, 1980.

i. *Expiration date of original license:* February 23, 2002.

j. The 21-megawatt project consists of: Lake Aloha and dam; Echo Lake, dam, and conduit; Caples Lake and the main and auxiliary dams; Silver Lake and dam; El Dorado Forebay and dam; El Dorado Dam and fish ladder; El Dorado penstock and powerhouse; and El Dorado Canal.

k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Pacific Gas and Electric Company, 245 Market Street, Room 1103, San Francisco, CA 94105, ATTN: John Gourley, (415) 972–5772.

l. *FERC contact:* Héctor M. Pérez (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 23, 2000.

4a. *Type of Application:* Approval to amend license to modify whitewater release flows.

b. *Project No:* 2899–065.

c. *Date Filed:* February 13, 1997.

d. *Applicant:* Idaho Power Company and Milner Dam, Inc.

e. *Name of Project:* Milner Hydroelectric Project.

f. *Location:* Twin Falls, Cassia, Jerome, and Minidoka Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ms. Laurel Heacock, Idaho Power Company, P.O. Box 70, Boise, ID 83707, (208) 388–2918.

i. *FERC Contact:* Jean Potvin, (202) 219–0022.

j. *Comment Date:* April 14, 1997.

k. *Description of Project:* Licensee proposes to modify whitewater release flows to the Milner Reach by reducing the Daylight hours of bypass flows from eight to four hours, shutting down the main powerhouse only when inflow to the Project is between 10,500 and 12,500 cfs, providing flows between May and June, and providing flows only on weekend days and the observed Memorial Day holiday.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 12, 1997, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6776 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–P

Notice of Application Filed With the Commission

March 10, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 2042.

c. *Date Filed:* February 18, 1997.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* 3 miles north of the town of Ione, Washington on the Pend Oreille River in Pend Oreille County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Bob Geddes, Manager of Regulatory Affairs, PUD No. 1 of Pend Oreille County, P.O. Box 190, Newport, WA 99156, (509) 447–9342, (509) 447–5824 (Fax).

i. *FERC Contact:* J. W. Flint, (202) 219–2667.

j. *Comment Date:* April 18, 1997.

k. *Description of Application:* The amendment of license proposes to change the limit of the upstream project boundary from River Mile 34.4 near Ruby, Washington, to the Corps of Engineers' Albeni Falls Dam, near the Washington-Idaho borders, Rm 90.1. The new project boundary will enclose all lands which are flooded for flows up to 90,000 cfs.

l. *This notice also consists of the following standard paragraphs: B, C1, and D2.*

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6777 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

March 10, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No:* 11509–000.

c. *Date Filed:* December 5, 1994.

d. *Applicant:* City of Albany, Oregon.

e. *Name of Project:* City of Albany, Oregon Hydroelectric Project.

f. *Location:* T12S, R1W, Section 19; T12S, R2W, Sections 2, 3, 11, 23, and 24; T11S, R3W, Sections 6, 7, 15, 18, and 20–25; T11S, R2W, Sections 30–34; and T11S, R4W, Section 12 (South Santiam River, Calaoppoia River, and Albany-Santiam Canal in Linn County, Oregon and the cities of Albany, Oregon and Lebanon, Oregon).

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–(825(r).

h. *Applicant Contact:* Peter Harr, Civil Engineer II, City of Albany, 333 Broadalbin SW, P.O. Box 490, Albany, Oregon 97321–0144, (541) 917–7643.

i. *FERC Contact:* Nicholas J. Jayjack, (202) 219–2825.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* May 9, 1997.

k. *Status of Environmental Analysis:* The application is now ready for environmental analysis—see attached paragraph D10.

l. Brief Description of Project: The proposed project would consist of: (1) the existing 450-foot-long, 6-foot-high, flashboard-equipped concrete dam known as Lebanon dam that would be modified to have a fixed crest and a new height of 7.5 feet; (2) the existing 18-mile-long Albany-Santiam Canal that would be dredged and screened; (3) an existing 55-foot-long, 6-foot-diameter steel penstock; (4) an existing powerhouse that would be modified to have an installed capacity of 500 kilowatts; (5) the existing 2.4-kilovolt, 300 foot-long transmission line; and (7) related appurtenances.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at: 888 First St., NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–6778 Filed 3–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5710–9]

Science Advisory Board; Request for Nomination of Members and Consultants

In accordance with its standard operating procedures (SAB–FRL–2657–4 dated August 21, 1984), the Science Advisory Board (SAB), including the Clean Air Scientific Advisory Committee (CASAC) and the Council on Clean Air Compliance Analysis (Council), previously referred to as the Clean Air Act Compliance Advisory Council (CAACAC), of the Environmental Protection Agency (EPA) is soliciting nominations for Members and Consultants (M/Cs). As part of this effort, the Agency is publishing this notice to describe the purpose of the SAB and to invite the public to nominate appropriately qualified candidates to fill upcoming vacancies. This process supplements other efforts to identify qualified candidates.

The SAB is composed of non-Federal government scientists and engineers who are employed on an intermittent basis to provide independent advice directly to the EPA Administrator on technical aspects of public health and environmental issues confronting the Agency. Members of the SAB are appointed by the Administrator—generally in October—to serve two years terms with some possibilities for reappointment. Consultants are appointed throughout the year, as the need arises, by the Staff Director of the Science Advisory Board to serve renewable one-year terms and serve on SAB committees, as needed. Many individuals serve as Consultants prior to serving as Members.

Any interested person or organization may nominate qualified persons to serve on the SAB. Nominees should be qualified by education, training and experience to evaluate scientific, engineering and/or economics information on issues referred to and addressed by the Board. The principal criteria in the membership selection process are:

a. Technical competence.

b. Independence.

c. Ability to work in a committee environment.

d. Overall balance of technical points of view on the SAB. Historically, between 15 and 20 new Members and between 30 and 40 new consultants are appointed each year.

Members and Consultants most often serve in association with one of the following standing committees: Advisory Council on Clean Air Compliance Analysis, Clean Air Scientific Advisory Committee, Drinking Water Committee, Ecological Processes and Effects Committee, Environmental Economics Advisory Committee, Environmental Engineering Committee, Environmental Health Committee, Integrated Human Exposure Committee, Radiation Advisory Committee, and Research Strategies Advisory Committee.

Members and Consultants can expect to attend 1–6 meetings per year, based upon the activity of the committee on which they serve. M/Cs generally serve as Special Government Employees (SGEs) (40 CFR part 3, subpart F or EPA Ethics Advisory 88–6 dated 7/6/88) and receive compensation, in addition to reimbursement at the Federal government rate for travel and per diem expenses while serving on the SAB. SGEs are required to complete an application package, including a Confidential Financial Disclosure Report.

Nominees should be identified by name, occupation, position, address, telephone number, fax number, email address (if available) and SAB committee of primary interest. Nominations should include a current resume or curriculum vitae that addresses the nominee's background, experience, qualifications, and specific areas of expertise (e.g., genetic toxicologist, resource economist, etc.).

Information on the nominees will be evaluated and entered into the SAB's M/C data base which will be consulted whenever vacancies arise and/or when special expertise is needed for particular reviews. This request for nominations does not imply any commitment by the Agency to select individuals to serve as a Member of or Consultant to the Science Advisory Board from the responses received.

Nominations should be submitted to: Ms. Carolyn Osborne, Project Coordinator, Science Advisory Board, USEPA, 401 M Street, SW, Washington, DC 20460 Tel:(202) 260–9644 no later than June 13, 1997. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in the Annual Report of the Staff Director which is available at the SAB Website URL http://www.epa.gov/science1 or by calling (202) 260–8414 or by INTERNET at BARNES.Don@EPAMAIL.GOV.

Dated: March 7, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–6828 Filed 3–17–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00475; FRL–5596–6]

1996 Food Quality Protection Act, Amendments to the Laws Governing the Regulation of Pesticides; EPA's Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA's plan for implementing the provisions of the Food Quality Protection Act of 1996 is now available to the public. On August 3, 1996, President Clinton signed into law the Food Quality Protection Act of 1996 (FQPA). FQPA significantly amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), the laws governing pesticide regulation. EPA's FQPA Implementation Plan summarizes the provisions of FQPA and explains the Agency's approach to implementing them. FQPA significantly changes the way pesticides must be reviewed. The new law requires EPA, among other things, to upgrade its scientific review procedures to provide a more complete assessment of pesticide risks, especially risks to potentially sensitive groups, such as infants and children. FQPA sets a new health-based safety standard for all pesticide residues in food and requires that all established permissible pesticide residue limits (tolerances) be re-evaluated in accordance with the new standard. This Federal Register Notice announces the availability of the Implementation Plan and instructs the public on how to obtain it.

ADDRESSES: By mail: Copies of the FQPA Implementation Plan are available by mail at the following locations: Public Response and Program Resources Branch, or the Communications Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person:

1. Public Response and Program Resources Branch, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5805.

2. Communications Services Branch, Rm. 1120, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5017.

FOR FURTHER INFORMATION CONTACT: By mail: Christine Gillis, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone (703) 305–5131

SUPPLEMENTARY INFORMATION:
Electronic Availability: Electronic copies of this document and the Implementation Plan are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/). The Implementation Plan is also posted at the FQPA section of EPA's Website: http://www.epa.gov/opppsps1/FQPA.

FQPA represents the most significant piece of pesticide and food safety legislation enacted in 30 years. It provides unprecedented opportunities to safeguard the health of all Americans, particularly infants and children, from risks posed by pesticides. The President called it ''the peace of mind act'' because it will ''give parents the peace of mind that comes from knowing that the fruits, vegetables, and grains that they set down in front of their children are safe.'' FQPA signals a new era in food safety regulation in the United States. Major provisions, once fully implemented, will strengthen health and environmental protection in a number of ways. FQPA will:

- Establish a single, health-based standard for all pesticide residues in food, eliminating past inconsistencies in the law which treated residues in some processed foods differently from other raw and processed foods.
- Provide for a more complete assessment of potential risks, with special protections for potentially sensitive groups, such as infants and children.
- Require a reassessment of all existing residue limits in accordance with the new standard.
- Expand consumers' ''right to know'' about pesticide risks and benefits by requiring a new brochure for display in supermarkets and grocery stores.
- Ensure that all pesticides are periodically re-evaluated for adherence to current safety standards and are supported by up-to-date scientific data.
- Expedite the approval of safer, reduced risk pesticides.
- Encourage the development of safer, effective crop protection tools for American farmers.
- Promote national uniformity in pesticide residue limits, while respecting states' rights to require labeling or other warnings.
- Establish a more consistent, protective regulatory process, grounded in sound science and adaptable to future advances in scientific understanding.

No specific transition period is provided by the new FQPA, but the law contains sufficient flexibility to allow for a phase-in period as EPA deals with the complexities of the new provisions. An important element of EPA's plan for implementation is the development of interim strategies to allow EPA to make timely decisions which are protective and economical but which can be revisited as implementation progresses. EPA intends to continually review all activities undertaken to implement the FQPA amendments, to assess their effectiveness and to make modifications as necessary. EPA will update implementation communication materials on a regular basis.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides, and pests.

Dated: March 12, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–6804 Filed 3–17–97; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 20, 1997, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
B. *Report*
Farm Credit System Building Association Quarterly Report
C. *New Business*
Regulation
1. Disclosure to Shareholders [12 CFR Part 620](Final)
2. Cumulative Voting for Bank Directors [12 CFR Part 615] (Proposed)

Dated: March 14, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–6951 Filed 3–14–97; 2:37 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2178–Corrected]

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 April 2, 1997. 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 the 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 38l60–40.0 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. 97–6749 Filed 3–17–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 noon, Monday, March 24, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–6957 Filed 3–14–97; 2:44 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Availability of Final Environmental Impact Statement/Environmental Impact; Report for Proposed San Francisco Federal Building, San Francisco, CA

AGENCY: Public Buildings Service, United States General Services Administration.

ACTION: Notice.

SUMMARY: The United States General Services Administration (GSA) hereby gives notice that a joint Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) has been prepared and filed with the United States Environmental Protection Agency (EPA) for the proposed construction of a new Federal Building within the City of San Francisco, California, in accordance with the Council of Environmental Quality regulations and the procedural provisions of the National Environmental Policy Act (NEPA). The proposed project involves the construction of a new Federal Building with 161 approximately 475,000 occupiable square feet of space (675,000 gross square feet) and onsite parking spaces. The purpose of this project is (1) to consolidate federal agencies housed in multiple locations in order to increase efficiency and to reduce the amount of government leased space and (2) to house law enforcement agencies that are not suitable as lease tenants. The preferred alternative for this project is the site located at 7th and Mission Streets.

DATES: Submit written comments on the Final EIS/EIR to GSA on or before April 21, 1997.

ADDRESSES: Mail written comments and requests for copies to Ms. Jane Woo, U.S. General Services Administration, Portfolio Management Division (9PT), 450 Golden Gate Avenue, 3rd Floor, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT:

Ms. Jane Woo, (415) 522–3487.

(Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977)).

Dated: March 11, 1997.

Kenn N. Kojima,

Regional Administrator (9A).

[FR Doc. 97–6820 Filed 3–17–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96E–0504]

Determination of Regulatory Review Period for Purposes of Patent Extension; BAYTRIL®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BAYTRIL® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a

regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product BAYTRIL® (enrofloxacin). BAYTRIL® is indicated for chickens to control mortality associated with *Escherichia coli* susceptible to enrofloxacin, and for turkeys to control mortality associated with *E. coli* and *Pasturella multocida* (fowl cholera) susceptible to enrofloxacin. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BAYTRIL® (U.S. Patent No. 4,670,444) from Bayer Aktiengesellschaft and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 21, 1997, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of BAYTRIL® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BAYTRIL® is 4,334 days. Of this time, 648 days occurred during the testing phase of the regulatory review period, while 3,686 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: November 24, 1984. The applicant claims November 20, 1984, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's official acknowledgment letter assigning a number to the INAD was November 24, 1984, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the human drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: September 2, 1986. The applicant claims August 26, 1986, as the date the new animal drug application (NADA) for BAYTRIL® (NADA 140–828) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgment letter assigning a number to the NADA was September 2, 1986, which is considered to be the initially submitted date for the NADA.

3. *The date the animal drug was approved*: October 4, 1996. FDA has verified the applicant's claim that NADA 140–828 was approved on October 4, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 19, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 15, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–6719 Filed 3–17–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97D–0024]

Medical Devices; Immunotoxicity Testing Framework; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Immunotoxicity Testing Framework.'' This guidance will provide reviewers and manufacturers with a coherent strategy for assessing whether testing for potential adverse effects involving medical devices or constituent materials and the immune system is needed. The draft guidance will also aid in developing a systematic approach to such testing.

DATES: Written comments by June 16, 1997.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Immunotoxicity Testing Framework'' to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0806 (toll free outside of MD 1–800–638–2041). Send two self addressed adhesive labels to assist that office in processing your requests. The draft guidance is also available via the World Wide Web at http://www.fda.gov/cdrh/draftgui.html. A text only version is also available from a VT–100 compatible terminal via the FDA bulletin board by dialing 800–222–0185 (terminal settings are 8/1/N).

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John J. Langone, Center for Devices and Radiological Health (HFZ–113), Food and Drug Administration, 12709 Twinbrook Pkwy., Rockville, MD 20852, 301–443–7132.

SUPPLEMENTARY INFORMATION:

I. Background

In May 1995, FDA adopted the General Program Memorandum G95–1, an FDA-modified version of International Standard ISO–10993, entitled ''Biological Evaluation of Medical Devices-Part 1: Evaluation and Testing.'' It was pointed out that in addition to the general guidance for toxicity testing contained in that document, additional guidance might be needed for evaluation of specific organ or system toxicity. As a result, the Office of Device Evaluation, Center for Devices and Radiological Health, developed the

draft ''Immunotoxicity Testing Framework'' to deal specifically with testing for adverse effects of medical devices or constituent materials on the immune system. The draft guidance will provide medical device manufacturers with FDA's current thinking on immunotoxicity testing, and it will help to ensure a consistent and scientifically sound approach to the overall evaluation of product safety.

The draft guidance also contains a flow chart to determine if immunotoxicity testing is recommended, and three tables that lead sequentially from potential immunological effects, to potential responses commonly associated with those effects, to examples of testing that might be considered as part of the overall safety evaluation of finished devices or constituent materials.

In the past, guidances generally have been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidances to state procedures or standards of general applicability that are not legal requirements, but that are acceptable to FDA. This guidance represents FDA's current thinking on the issue of immunotoxicity testing for medical devices and constituent materials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Request for Comments

Interested persons may, on or before June 16, 1997, submit to the Dockets Management Branch (address above) written comments regarding the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in determining whether to amend the current draft guidance document.

Dated: March 6, 1997.

Joseph A. Levitt,

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

[FR Doc. 97–6715 Filed 3–17–97; 8:45 am]

BILLING CODE 4160–01–F

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Oversight Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its clinical hold oversight committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held on May 13, 1997. Biological product companies may submit review requests for the May meeting by April 4, 1997.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting a review committee to review clinical holds (see 61 FR 1033, January 11, 1996). CBER held its first clinical hold oversight committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The committee last met in February 1997. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered ''anonymously.'' The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman,

are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the oversight committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review at its May 13, 1997, meeting. Submissions should be made by April 4, 1997, to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman (address above).

Dated: March 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–6779 Filed 3–17–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration, HHS

Submitted for Collection of Public Comment: Submission for OMB Review (HCFA–R–4)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements contained in 42 CFR 447.253; *Form No.:* HCFA–R–4; *Use:* The Medicaid Management Information System (MMIS) is a State-operated, Federally mandated computer system used for automated Medicaid claims processing and information retrieval for program management. Data elements represent the Federally imposed recordkeeping requirements of MMIS; *Frequency:* Annually; *Affected Public:* Business or other for profit; State, local, or tribal government; *Number of Respondents:* 50; Total Annual Responses: 50; *Total Annual Hours:* 2,298,250.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 5, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–6789 Filed 3–17–97; 8:45 am]

BILLING CODE 4120–03–P

[Document Identifier: HCFA-R–201]

Correction Notice: Agency Information Collection Activities: Submission for Emergency OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding 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.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Managed Care Organization, Incentive Arrangement Disclosure Form and Supporting Regulations 42 CFR 417.479, 417.500, 434.44, 434.67, 434.70, 1003.100, 1003.101, 1003.103, 1003.106; *Form No.:* HCFA–R–201; *Use:* Final rule OMC–10, published in the Federal Register on 12/31/96, disclosed to the public that the information collection requirements referenced in OMC–10-F, would be submitted to OMB for emergency review upon publication of the rule. However, Section V of final rule OMC–10 neglected to denote that the forms used to capture the information collection requirements referenced in OMC–10 would also be submitted to OMB as part of the emergency review. These forms which will be used to demonstrate and monitor compliance with statute governing physician incentives under Medicare and Medicaid managed care organizations, were created in an extensive cooperative effort with the American Association of Health Plans, State Medicaid Agency representatives, and the Medicaid Managed Care Technical Advisory group. Therefore, we are correcting this oversight and are requesting comment on the forms and supporting regulations. These forms are available for inspection on the HCFA website, on the Internet, at http://www.hcfa.gov; *Frequency:* Annually; *Affected Public:* Business or other for profit, not for profit institutions, state, local or tribal government, and federal government; *Number of Respondents:* 450; *Total Annual Responses:* 450; *Total Annual Hours:* 45,000.

To obtain copies of 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 collection should be sent within 5 days of this notice directly to

the OMB Desk 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: March 13, 1997.

Edwin J. Glatzel,

Director Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–6825 Filed 3–17–97; 8:45 am]

BILLING CODE 4120–03–P

Public Health Service

Second Food and Nutrition Board Workshop on B Vitamins

AGENCY: Office of Disease Prevention and Health Promotion, Public Health Service, DHHS.

ACTION: Second Food and Nutrition Board Workshop on B Vitamins; notice of meeting and request for information.

SUMMARY: The Food and Nutrition Board (FNB), Institute of Medicine, National Academy of Sciences, under the auspices of the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, will hold an open workshop to address the nutrients thiamin, riboflavin, niacin, vitamin B–6, pantothenic acid, and biotin.

DATES: The open meeting will be held from 12:30 until 5:30 p.m. P.D.T. on May 20, 1997, and from 8:00 a.m. until 12:30 p.m. P.D.T. on March 21, 1997, at the Arnold and Mabel Beckman Center Auditorium, National Academy of Sciences and Engineering, 100 Academy Drive, Irvine, California. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Diane Johnson, Program Assistant, Food and Nutrition Board, 2101 Constitution Avenue, NW., Washington, DC 20418, (202) 334–1312, or send an e-mail to FNB@NAS.EDU.

SUPPLEMENTARY INFORMATION: Speakers have been invited to present evidence bearing on requirements and adverse effects, if any, of high levels of intake of thiamin, riboflavin, niacin, vitamin B–6, pantothenic acid, and biotin. Information presented will be considered by the committee in its development of Dietary Reference Intakes for these nutrients. Interested individuals and organizations are encouraged to provide written scientific information for the committee's use. Those wishing to be considered for a brief oral presentation should submit an abstract with references to FNB, 2101 Constitution Ave., NW., Washington, DC 20418, by May 2, 1997. The study for which this meeting is being held is supported by the Department of Health and Human Services (Office of Disease Prevention and Health Promotion, Office of Public Health and Science; Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention; and Office of Dietary Supplements, Office of Disease Prevention, National Institutes of Health). The meeting is open to the public; however seating is limited. If you will require a sign language interpreter, please call Diane Johnson at (202) 334–1312 by 4:30 p.m. E.D.T. on May 12, 1997.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 97–6709 Filed 3–17–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Relationship of Interior Programs to E.O. 12372 Process; Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice contains revisions being made to a list of programs and activities eligible for E.O. 12372, ''Intergovernmental Review of Federal Programs'' process use and a list of programs and activities with existing consultation processes. This list was originally published as a notice in the Federal Register on June 24, 1983 (48 FR 29235–29236) and was subsequently revised in Federal Register notices published on March 7, 1984 (49 FR 8495) and February 7, 1985 (50 FR 5316–5317). These publications should be referred to and except for the changes indicated in today's notice, there are no further changes being made at this time. Updated names of bureau and office Intergovernmental Review Coordinators are included in the section below for contacts for further information.

EFFECTIVE DATES: This notice shall become effective on March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, (Director, Procurement and Property Management Systems), (202) 208–3336. Department of the Interior Intergovernmental Review Coordinators Ceceil C. Belong (Departmental Contact) 202–208–3474; *National Park Service;* Ken Compton (Recreation Grants Division) 202–343–3700, Geraldine Smith (Policy Division) 202–208–7456, Joe Wallis (Heritage Preservation Services Division) 202–343–9564; *Office of Surface Mining Reclamation and Enforcement,* Barbara Ramey 202–208–2843; *Minerals Management Service,* Dennis Buck 703–787–1370; *Bureau of Land Management,* Tom Walker 202–208–4896; *U.S. Fish and Wildlife Service,* Phyllis Cook 703–358–1943; *U.S. Geological Survey,* Gary Hill 703–648–4451; *Bureau of Reclamation,* Patricia Zelazny 303–236–3750.

Programs Under Which States May Opt to Use E.O. 12372 Process

Administering Bureau: National Park Service

Catalog No. 15.904

The Program Name should be corrected to state, ''Historic Preservation Fund Grants-in-Aid'' rather than ''Historic Preservation-Grants-in-Aid.''

Catalog No. 15.920.

This program should be deleted because the Budget authority has expired.

Administering Bureau: Bureau of Reclamation.

Catalog Nos. 15.501, 15.502, and 15.503 and the Atmospheric Water Resources Management Program Research.

The above referenced programs should be deleted from the list because they are no longer functional and have been removed from the *Catalog of Federal Domestic Assistance.*

Administering Bureau: U.S. Fish and Wildlife Service.

Catalog No. 15.605.

The Program name should be corrected to state, ''Sport Fish Restoration,'' to be consistent with the new title in the *Catalog of Federal Domestic Assistance.*

Catalog Nos. 15.600 and 15.612.

The above referenced programs should be deleted from the list because the Budget authority for them has expired and they have been removed from the *Catalog of Federal Domestic Assistance.*

Catalog Nos. 15.614, 15.615. 15.616, 15.617, and 15.618.

Program Nos. 15.614, ''Coastal Wetlands Planning, Protection and Restoration Act,'' 15.615, ''Cooperative Endangered Species Conservation Fund,'' 15.616, ''Clean Vessel Act,'' 15.617, ''Wildlife Conservation and Appreciation,'' and 15.618, ''Administrative Grants

for Federal Aid in Sport Fish and Wildlife Restoration'' are added to the list in order to be consistent with covered programs included in the *Catalog of Federal Domestic Assistance.*

Interior Programs With Existing Consultation Processes

Bureau: Fish and Wildlife Service

The entries for Established Research and Research at Cooperative Units should be deleted since these activities are no longer the responsibility of the U.S. Fish and Wildlife Service.

Bureau: Bureau of Mines

The entry for the Bureau of Mines, ''State Mining and Mineral Resources and Research Institutes,'' should be deleted from the list because the Budget authority has expired and the program has been removed from the *Catalog of Federal Domestic Assistance.*

Bureau: Bureau of Reclamation

The following program should be added to the list of programs administered by this bureau:

5. Desalination Research and Development—42 U.S.C. 7815–16.

Bureau: U.S. Geological Survey

The following entries should be added to the list of activities administered by this bureau:

4. Established Research—16 U.S.C. 661–661c, 742a–742l, 757a–757l, 778–778c, 931–939c.

5. Research at Cooperative Units—16 U.S.C. 753a–b.

Dated: March 10, 1997.

Robert J. Lamb,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 97–6744 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–RF–M

Bureau of Land Management

[WY–920–07–1320–00]

Powder River Regional Coal Team Activities; Schedule of Public Meeting

AGENCY: Department of the Interior, Wyoming.

ACTION: Notice of schedule of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) announces that it has scheduled its annual public meeting for April 23, 1997 for the following purposes: (1) review current and proposed activities in the Powder River Coal Region, (2) review new and pending coal lease applications (LBA), and (3) make recommendations on new coal lease applications.

DATES: The RCT meeting will begin at 9:00 a.m. M.D.T. on Wednesday, April 23, 1997, at the Wyoming Conservation Commission Meeting Room, 777 West 1st Street, Casper, Wyoming. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Wyoming Conservation Commission's Meeting Room, 777 1st Street, Casper, Wyoming. Attendees may wish to make their room reservations before until April 11, 1997. A block of rooms has been reserved for team members and guests at the Casper Hilton Inn through April 11, 1997. For room reservations call 1–307–266–6000.

FOR FURTHER INFORMATION CONTACT: Pam Hernandez or Eugene Jonart, Wyoming State Office, Attn. (922), P.O. Box 1828, Cheyenne, Wyoming 82003: telephone (307) 775–6270 or 775–6257.

SUPPLEMENTARY INFORMATION: Primary purpose of the meeting is to discuss pending and new coal lease applications (LBA) from Evergreen Enterprises, (WYW138975), filed on May 13, 1996, for an estimated 675 million tons and 7,841 acres, and the Antelope Coal Company (WYW141435), filed February 14, 1997, for an estimated 177 million tons and 1,470 acres. This is the initial public notification of the pending applications listed above, in accordance with the Powder River Operational Guidelines (1991). Generally, a coal lease application filed under the LBA portion of BLM regulations (43 CFR 3425) takes two to four years to be processed to the competitive sale stage, depending on informational and environmental study requirements. The RCT may generate recommendation(s) for any or all of the new and pending LBAs.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY. 82003 no later than April 14, 1997, or by addressing the RCT with his/her concerns at the meeting on April 23, 1997.

The proposed agenda for the meeting follows:

1. Introduction of RCT Members and guests.

2. Approval of the Minutes of the April 23, 1996, Regional Coal Team meeting held in Cheyenne, Wyoming.

3. Regional Coal Activity Status:

a. Current Production and Trend

b. Activity Since Last RCT Meeting:

c. Status of pending LBAs previously reviewed by RCT:

—North Rochelle LBA—WYW127221, Zeigler; filed 7/22/92; 140 million tons; est. sale date July 1997. Draft EIS was reviewed by public from November 8, 1996 thru January 10, 1997. A public hearing was held in Gillette, WY, on December 12, 1996.

—Powder River—WYW136142; Peabody; filed 3/23/95, est. 550 million tons, 4,020 acres, tentative sale date in March 98

—Jacob's Ranch—WYW136458; (Wyoming), Kerr-McGee; filed 4/14/95, est. 432 million tons, 4,000 acres, tentative sale date June 98.

d. Status of Coal Exchanges—Belco/Hay Creek; Nance/Brown AVF

e. Pending Coal Lease Modifications (if any):

f. New coal lease applications (LBAs):

4. Update of Selected Portions of 1996 Executive Summary.

5. Other Regional Issues:

—Status of Buffalo Resource Area's Management Plan, (Wyoming).

—Encoal Corporation Presentation

—North American Power Group Presentation

6. Lease Applicant Presentations:

—Evergreen Enterprises

—Antelope Coal Company

7. RCT Activity Planning Recommendations

—Review and recommendation(s) on pending lease Application(s).

8. Discussion of the next meeting.

9. Adjourn.

Public discussion opportunities will be provided on all agenda items.

Alan R. Pierson,

State Director, Wyoming.

[FR Doc. 97–6579 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–22–M

[ES–931–07–1430–01; MIES–033804]

Public Land Order No. 7249; Partial Revocation of Executive Order Dated July 24, 1875; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 1.70 acres of public land withdrawn for use by the U.S. Coast Guard for lighthouse purposes. The land is no longer needed for lighthouse purposes. This action will open the land to surface entry. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1671.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988) it is ordered as follows:

1. The Executive Order dated July 24, 1875, which withdrew public land for use as lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Michigan Meridian

Point Betsie Lighthouse

T. 26 N., R. 16 W.,
Sec. 4, lot 10.

The area described contains 1.70 acres in Benzie County.

2. At 10:00 a.m. on April 17, 1997 the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 17, 1997 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 19, 1997

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–6790 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–GJ–P

[OR–957–00–1420–00: G7–0117]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 4 E., accepted January 31, 1997
T. 21 S., R. 1 W., accepted January 31, 1997
T. 16 S., R. 3 W., accepted January 24, 1997
T. 38 S., R. 4 W., accepted January 31, 1997
T. 32 S., R. 5 W., accepted January 31, 1997
T. 21 S., R. 9 W., accepted January 24, 1997
T. 23 S., R. 9 W., accepted January 24, 1997
T. 25 S., R. 13 W., accepted February 28, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: March 7, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–6712 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Public Notice

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued operation of commercially guided horse rides, for the public at Bryce Canyon National Park for a period of five (5) years from January 1, 1998 through December 31, 2002.

EFFECTIVE DATE: Offers will be accepted for sixty (60) days under the terms described in the Prospectus. The sixty (60) day application period will begin with the release of the Prospectus, which will occur on or before April 17, 1997. The actual release date of the Prospectus shall be the date of publication in the ''Commerce Business Daily''.

ADDRESSES: Interested parties should contact the Superintendent; Bryce Canyon National Park; P.O. Box 170001; Bryce Canyon, Utah 84717; to obtain a copy of the Prospectus describing the requirements of the proposed contacts.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligation to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1997. Therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), the concessioner is entitled to be given preference in the renewal of the contract and in the award of a new contract providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all offers received as a result of this notice. Any offer, including that of the existing concessioner, must be received by the Superintendent, Bryce Canyon National Park; P.O. Box 170001; Bryce Canyon, Utah 84717; not later than sixty (60) days following release of the Prospectus to be considered and evaluated.

Dated: March 7, 1997.

John T. Crowley.

Acting Director, Intermountain Region.

[FR Doc. 97–6824 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–70–P

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee

Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on April 21, 22 and 23, 1997, in Los Angeles, California.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet at the Getty Conservation Institute which is located at 1200 Getty Center Drive in Los Angeles, California. Matters to be discussed will include, staff program updates and the establishment of non-Federal support for the Center's programs.

Monday, April 21 the meeting will start at 9:00 am and end at 5:00 pm. On Tuesday, April 22, the meeting will be begin at 8:30 am and end at 4:30 pm and Wednesday, April 23, the meeting will begin at 8:30 am and end at noon. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed by the National Preservation Technology and Training Board, with the National Park Service, Heritage Preservation Services, P.O. Box 37127, Washington, DC 20013–7127, ATTN: Carol Gould. If you plan to attend the meeting you must notify Carol Gould at telephone (202) 343–9585 by Thursday, April 17, 1997, so that arrangements can be made for you to gain access to the Getty Conservation Institute facility.

Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at Heritage Preservation Services Office, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: 12 March 1997.

E. Blaine Cliver,

Chief, HABS/HAER, Designated Federal Official, National Park Service.

[FR Doc. 97–6823 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–70–P

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 8, 1997. Pursuant to § 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 April 2, 1997.

Patrick Andrus,

Acting Keeper of the National Register.

CALIFORNIA

Los Angeles County

Culver Hotel, 9400 Culver Blvd., Culver City, 97000296

Riverside County

First Congregational Church of Riverside, 3504 Mission Inn Ave., Riverside, 97000297

Ventura County

McCrea, Joel, Ranch, 4500 N. Moorpark Rd., Thousand Oaks, 97000295

COLORADO

Denver County

Kistler Stationery Company Building, 1636 Champa St., Denver, 97000298

CONNECTICUT

New Haven County

East Rock Park, Roughly bounded by State, Davis, and Livingston Sts., Park and Mitchell Drs., and Whitney Ave., New Haven, 97000299

GEORGIA

Lamar County

Gachet, Benjamin, House, GA 18, 3 mi. W of Barnesville, Barnesville vicinity, 97000301

Thomas County

Mill Creek Plantation, 100 Mill Creek Plantation, Thomasville vicinity, 97000300

INDIANA

Delaware County

Cincinnati, Richmond, & Muncie Depot, Wysor St., jct. of Broadway, Muncie, 97000304

Marion County

Campbell, Henry F., Mansion, 2550 Cold Spring Rd., Indianapolis, 97000305

Morgan County

Burton Lane Bridge, Burton Ln. over Indian Cr., .3 mi. S of IN 37, Martinsville vicinity, 97000302

East Washington Street Historic District, Roughly, E. Washington St. from Sycamore to Crawford Sts., Martinsville, 97000306

Tippecanoe County

Ninth Street Hill Neighborhood Historic District, Roughly, 9th St. from South to Kossuth Sts. and State St. from 9th to Kossuth Sts., Lafayette, 97000303

IOWA

Clinton County

Chicago, Milwaukee, St. Paul & Pacific Depot—Delmar (Advent and Development of Railroads in Iowa, 1850—1940 MPS), W of Main St., between Railroad St. and Clinton Ave., Delmar, 97000308

Jasper County

Long, J. G. and Regina, House, Co. Rd. F70, .5 mi. W of Monroe city limits, Monroe vicinity, 97000307

MAINE

Cumberland County

Dyer—Hutchinson Farm, 1148 Sawyer Rd., South Portland vicinity, 97000313

Penobscot County

Curtis, John B., Free Public Library, Jct. of ME 11 and ME 221, NE corner, Bradford, 97000310

District No. 2 School, Jct. of Pleasant St. and Caribou Rd., SE corner, Passadumkeag, 97000309

Piscataquis County

Burgess, Walter and Eva, Farm, 79 Shaw Rd., Macomber Corner vicinity, 97000312

York County

Dalton, Benjamin and Abigail, House, Address Restricted, North Parsonsfield vicinity, 97000311

MARYLAND

Wicomico County

Wailes, F. Leonard, Law Office, 116–118 E. Main St., Salisbury, 97000314

MONTANA

Chouteau County

Virgelle Mercantile and Virgelle State Bank, Co. Rd. 430, approximately 6.3 mi. S of US 87, Virgelle, 97000315

NORTH CAROLINA

Rutherford County

Bechtler Mint Site, Address Restricted, Rutherfordton vicinity, 97000316

RHODE ISLAND

Kent County

District Four School, 1515 W. Shore Rd., Warwick, 97000318

TEXAS

Harris County

West Eleventh Place Historic District, 1–8 W. 11th Pl., Houston, 97000317

WASHINGTON

King County

Great Northern Depot, Jct. of Railroad Ave. and 4th St., SE corner, Skykomish, 97000322

TOURIST II (auto ferry), 25 Lake Shore Plaza, Marina Park, Kirkland, 97000321

Pierce County

Dierenger School (Rural Public Schools in Washington MPS) 1808 E. Valley Hwy., Sumner, 97000324

Spokane County

Rockwood Historic District, Roughly, Rockwood Blvd. from 11th to 29th Aves., Spokane, 97000320

Stevens County

Opera House and I. O. O. F. Lodge, 151 W. 1st Ave., Colville, 97000319

Thurston County

Union Cemetery—Pioneer Calvary Cemetery, 5700 Littlerock Rd., Tumwater, 97000323

WISCONSIN

Dane County

Marquette Bungalows Historic District, Bounded by S. Thorton Ave., Rutledge, S. Dickinson, and Spaight Sts., Madison, 97000329

Door County

Welcker's Resort Historic District, Roughly bounded by Cottage Row, Maple, Cedar, and Main Sts., Gibralter, 97000328

Fond Du Lac County

Longfellow School, 221 Spaulding Ave., Ripon, 97000325

Iowa County

Spensley Farm, 1126 WI QQ, E of jct. with WI 39, Mineral Point, 97000330

Iron County

Springstead, Jct. of Old Springfield Tote Rd. and WI 182, Sherman, 97000326

Winnebago County

Omro Village Hall and Engine House, 144 E. Main St., Omro, 97000327

[FR Doc. 97–6822 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR parts 733 and 785.

DATES: Comments on the proposed information collection must be received by May 19, 1997 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 120—SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR part 733, Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, and part 785, Requirements for permits for special categories of mining.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, 30 CFR part 733.

OMB Control Number: 1029–0025.

Summary: This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts which the person believes establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Responses: 1.

Total Annual Burden Hours: 100 hours.

Title: Requirements for permits for special categories of mining, 30 CFR 785.

OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701, and 711 of Public Law 95–87, which require applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Applicants for coal mine activities.

Total Annual Responses: 463.

Total Annual Burden Hours: 8,443.

Dated: March 13, 1997.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 97–6754 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Harvey Bigelsen, M.D., Revocation of Registration

On April 19, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harvey Bigelsen, M.D., of Scottsdale, Arizona, proposing the revocation of his DEA Certificate of Registration BB3105992 and denial of any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Arizona. The order also advised that should no request for a hearing be filed within 30 days, his hearing right would be deemed waiver.

The Order to Show Cause was sent to Dr. Bigelsen by registered mail to his DEA registered address, but was returned to DEA unclaimed. The Order was next sent by registered mail to Dr. Bigelsen's last known residence in Scottsdale, Arizona, and is also was returned to DEA unclaimed. DEA then

attempted to locate Dr. Bigelsen in Arizona through the telephone directory and the Arizona Board of Medical Examiners without success. DEA investigators went to Dr. Bigelsen's last known address and were advised that he no longer lived there.

The Acting Deputy Administrator finds that DEA has attempted to locate Dr. Bigelsen and has determined that his whereabouts are unknown. It is evident that Dr. Bigelsen is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Acting Deputy Administrator concludes that considerable effort has been made to serve Dr. Bigelsen with the Order to Show Cause without success. Dr. Bigelsen is therefore deemed to have waived his opportunity for a hearing. The Acting Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 C.F.R. 1301.54 and 1301.57.

The Acting Deputy Administrator finds that effective May 2, 1994, the Board of Medical examiners of the State of Arizona (Board) entered into a Consent Order with Dr. Bigelsen whereby his license to practice medicine in the State of Arizona was canceled. The Board's action was a result of a plea agreement entered into by Dr. Bigelsen on or about October 21, 1993, wherein he pled guilty to charges of filing false, fictitious or fraudulent claims in violation of 18 U.S.C. 287, mail fraud in violation of 18 U.S.C. 1341, and conspiring to obstruct justice in violation of 18 U.S.C. 371. As part of the plea agreement, Dr. Bigelsen agreed to voluntarily relinquish his licenses to practice medicine in Arizona, New York and New Jersey, and his DEA Certificate of Registration. Attempts by DEA to obtain the voluntary surrender of Dr. Bigelsen's DEA Certificate of Registration have been unsuccessful.

As a result of the cancellation of his Arizona medical license, the Acting Deputy Administrator finds that Dr. Bigelsen is not currently authorized to handle controlled substances in the State of Arizona. The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Earl G. Rozeboom, M.D., 61 FR 60,730 (1996); Charles L. Novosad, Jr., M.D., 60 FR 47,182 (1995); Dominick A. Ricci, M.D., 58 FR 51,104 (1993). Since Dr. Bigelsen is not currently authorized to handle controlled substances in the State of Arizona, he is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BB3105992, previously issued to Harvey Bigelsen, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 17, 1997.

Dated: March 11, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–6792 Filed 3–17–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 96–36]

Yu-To Hsu, M.D., Denial of Application

On May 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Yu-To Hsu, M.D. (Respondent), of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) On ten separate occasions between February 28, 1991 and November 4, 1992, [Respondent] prescribed controlled substances to undercover officers for no legitimate medical purpose. On at least seven of those occasions, [Respondent] prescribed combinations of Tylenol with codeine and Valium (diazepam) to undercover officers when [he] knew or should have known that the combination of these drugs is highly abused on the streets.

(2) Following the execution of a Federal search warrant at [Respondent's] office, on December 4, 1992, [he] voluntarily surrendered his DEA Certificate of Registration, AH8099788, as well as [his] State of Texas Controlled Substances Registration Certificate. [Respondent's] Texas Controlled Substances Registration Certificate has since been reinstated.

(3) Following [Respondent's] indictment on seven counts of unlawful prescribing of controlled substances to undercover officers, on March 30, 1993, in the District Court of Harris County, Texas, [he] pled guilty to each count of the indictment. On July 23, 1993, [Respondent was] sentenced to probation for a period of ten years with deferred adjudication, fined $10,000 and ordered to perform 1,500 hours of community service.

By letter to DEA dated June 16, 1996, counsel for Respondent replied to the Order to Show Cause, but did not request a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. In a letter dated July 3, 1996, the Office of Administrative Law Judges advised counsel for Respondent that Respondent had until July 19, 1996, to file a request for a hearing or else be deemed to have waived the right to a hearing. No request for a hearing was filed on behalf of Respondent. Therefore, on July 24, 1996, Judge Bittner issued an order finding that Respondent had waived his right to a hearing, and ordering that all proceedings before her be terminated. Thereafter, the case was transmitted to the Deputy Administrator for issuance of a final order pursuant to 21 C.F.R. 1301.54(e).

According, the Acting Deputy Administrator now enters his final order in this matter pursuant to 21 C.F.R. 1301.54(e) and 1301.57, without a hearing and based on the investigative file and the letter dated July 16, 1996, from counsel for Respondent.

The Acting Deputy Administrator finds that sometime in the late 1980's or early 1990's, DEA received information from the Houston Police Department that Respondent was a major diverter of Schedule III through V controlled substances. DEA then contacted the Medicaid Fraud Division of the Texas Department of Human Services and learned that Respondent had issued a large number of controlled substance prescriptions. A subsequent survey of area pharmacies also revealed that Respondent issued a large number of controlled substance prescriptions and further revealed that he continually prescribed Tylenol with Codeine No. 4 (Tylenol No. 4), a Schedule III controlled substance, in combination with diazepam 10 mg., a Schedule IV controlled substance. At that time, this combination of drugs was being abused in the Houston area and was being sold at crack houses throughout the Houston area to help users alleviate the effects of coming off a crack cocaine high. In addition, DEA learned that on April 5, 1990, during the execution of a search warrant at a crack house by the Houston Police Department, several prescription bottles were found, containing Tylenol

No. 4 and diazepam and listing Respondent as the prescriber.

As a result of this information, DEA initiated an undercover investigation of Respondent's prescribing practices. On February 28, 1991, undercover DEA Agent #1 went to Respondent's office during which the agent indicated that she used crack cocaine and needed ''some pills . . . to mellow out.'' Respondent told her not to come back to his office and not to refer any other individuals to him, yet nonetheless issued the agent a prescription for 30 dosage units of Tylenol No. 4 and a prescription for 30 dosage units of diazepam 10 mg.

On April 4, 1991, undercover DEA Agent #2 told Respondent that she had just started to use crack cocaine and that she needed something to relax. Respondent asked the agent if she needed something to ''bring [her] down'' and told her to return to his office if she became a ''little big fidgety.'' Respondent issued the agent a prescription of 38 dosage units of diazepam 10 mg. and one for 50 dosage units of Soma, a non-controlled substance, and told the agent to return to see him and he could help her quit using crack cocaine.

Undercover DEA Agent #3 went to Respondent's office on July 31, 1991, posing as Agent #2's boyfriend. Agent #3 indicated that he smoked crack cocaine and that he had used some of the medication that Respondent had prescribed for his ''girlfriend''. The transcript of this visit indicates that Respondent stated, ''crack cocaine . . . it's a lot to satisfy a body. You know, you should buy the good stuff—cocaine. Concentration so much it stop a few puffs.'' The agent indicated that after smoking crack, ''the coming down was hurting.'' Respondent then asked, ''How many Valiums need you to get out of this state?'' Respondent issued the agent prescriptions for 30 dosage units of diazepam 10 mg. and 50 dosage units of Soma, but told the agent not to return to Respondent's office.

When Agent #3 returned to Respondent's office on September 17, 1991, he waited in the reception area for three hours. Respondent did acknowledge the agent's presence, but did not meet with the agent. The agent left Respondent's office without obtaining any controlled substances prescriptions.

On December 23, 1991, undercover Agent #4 went to Respondent's office and asked Respondent for some Valium (brand name for diazepam) or Tylenol with codeine No. 3 (Tylenol No. 3), a Schedule III controlled substance, stating that he had been using cocaine for about two years, that he's taken Tylenol No. 3 with beer in the past, and it has helped him ''come down off'' the cocaine. Respondent replied that the Tylenol No. 3 will not help him quit using cocaine, but that he will give him the medication anyway. Respondent further stated that the agent should not return to Respondent's office, and encouraged the agent to quit using cocaine. Respondent issued the agent prescriptions for 28 dosage units of diazepam 10 mg. and 30 dosage units of Tylenol No. 3.

Agent #4 returned to Respondent's office on January 29, 1992. Respondent asked the agent, ''what's your problem?'' The agent replied that, ''I just came in to see if I can get some, Tylenol 3's and some Valium.'' Respondent asked the agent why he used Tylenol No. 3 and the agent stated that, ''I use cocaine on occasion and it helps me come down after I get on it. . . .'' There was then some discussion regarding the merits of the agent selling cocaine. Respondent issued the agent a prescription for 26 dosage units of Tylenol No. 3 and a prescription for 28 dosage units of diazepam 10 mg.

On March 3, 1992, Agent #4 again returned to Respondent's office and asked for more Tylenol No. 3 and Valium. Respondent replied, ''You take too much man, you still smoking the dope?'' The agent told Respondent that he still used cocaine, and they then discussed the price of cocaine. The agent asked Respondent if he would see one of the agent's ''fiends'' who was out in the waiting room, but Respondent refused because the ''friend'' did not have any identification. Respondent issued the agent a prescription for 26 dosage units of Tylenol No. 3 and one for 28 dosage units of diazepam 10 mg.

Agnt #4 returned to Respondent's office on April 23, 1992, accompanied by undercover DEA Agent #5. Respondent first met with Agent #4 and asked the agent if he wanted some Tylenol No. 4 and Valium, and also asked the agent if he was still using cocaine. Respondent then issued the agent a prescription for 26 dosage units of Tylenol No. 4 and a prescription for 28 dosage units of diazepam 10 mg. Respondent next met with Agent #5. Agent #5 asked Respondent for some Tylenol No. 3 and some Valium because he uses cocaine and ''it helps me come down''. Respondent refused to issue the agency any controlled substance prescriptions on this occasion and encouraged the agent to stop using cocaine.

Agent #5 returned to Respondent's office on July 24, 1992. During this visit, Respondent remembered that he had not written any prescriptions for the agent on his previous visit. The agent told Respondent that he had quit using cocaine, but that he needed something because he had ''been burning the candle on both ends.'' On this occasion Respondent issued the agent a prescription for 28 dosage units of Tylenol No. 3 and a prescription for 28 dosage units of diazepam 10 mg.

On November 4, 1992, Respondent asked Agent #5 if he wanted the same medication. The agent told Respondent that he still used cocaine occasionally. Respondent issued him prescriptions for 28 dosage units of Tylenol No. 4 and 28 dosage units of diazepam 10 mg. Respondent told Agent #5 not to come to Respondent's office too often. On the same day, Respondent issued Agent #4 a prescription for 28 dosage units of Tylenol No. 4 and one for 28 dosage units of diszepam 10 mg.

As a result of this investigation, on December 4, 1992, Respondent surrendered his Texas controlled substance registration and his previous DEA Certificate of Registration, AH8099788. Subsequently, Respondent was indicted in the 179th District Court, Harris County, Texas and charged with seven counts of unlawful prescribing of controlled substances in violation of state law. On March 30, 1993, Respondent pled guilty to all seven counts, and on July 23, 1993, he was sentenced to probation for 10 years with deferred adjudication of guilt, fined $10,000.00 and ordered to perform 1,500 hours of community service.

In the letter dated June 16, 1996, Respondent's counsel asserted that Respondent ''has completed all of the terms of his deferred adjudication and his probation has been terminated,'' and that his state controlled substance license has been reinstated. Counsel also claimed that Respondent had a hearing before the state medical board in February 1994, and that Respondent's medical license ''was neither revoked nor suspended.'' There was no documentation submitted by Respondent to support any of these assertions. Regarding the undercover purchases of controlled substance prescriptions, Respondent's counsel stated, ''I would have tried an entrapment defense for [Respondent] but juries, I feel, cannot understand entrapment.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) the applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, the record indicates that while Respondent surrendered his state controlled substances license in December 1992, it ha since been reinstated with no restrictions. In addition, it is unclear exactly what action, if any, was taken by the Texas State Board of Medical Examiners regarding Respondent's license to practice medicine in that state. However, it is undisputed that he is currently licensed to practice medicine in Texas.

As to Respondent's experience in dispensing controlled substances, it is clear that Respondent prescribed controlled substances to the undercover agents for no legitimate medical reason. The agents told Respondent that they were cocaine users and that they needed Tylenol with codeine and Valium to help them come off their cocaine highs. The Acting Deputy Administrator finds that prescribing controlled substances for this purpose is reprehensible, since it fosters the continued illegal use of cocaine.

Regarding factor three, Respondent has been convicted of a controlled substance related offense. DEA has consistently held that a deferred adjudication of guilt following a plea of guilty is a conviction within the meaning of the Controlled Substances Act. See Harlan J. Borcherding, D.O., 60 FR 28,796 (1995); see also Clinton D. Nutt, D.O., 55 FR 30,992 (1990) (where plea was ''nolo contendere'' rather than ''guilty''). In his letter dated June 16, 1996, Respondent's counsel eludes to an entrapment defense to the charges brought against Respondent. There is no elaboration of this argument in Respondent's letter, and it is nonetheless irrelevant to this proceeding, since Respondent pled guilty to the charges against him.

As to factor four, Respondent's conviction in state court for the unlawful prescribing clearly shows that Respondent failed to comply with the applicable state law. In addition, Respondent's prescribing of controlled substances to the undercover agents for no legitimate medical purpose was in violation of 21 U.S.C. 841(a)(1).

In June 16, 1996 letter, Respondent's counsel asserts that Respondent has ''never had any trouble with the D.E.A. prior to 1993 and he does need his D.E.A. Certificate so that he may practice normally again.'' However, other than counsel's unsubstantiated assertions, there is no documentation in the record of Respondent's fitness to handle controlled substances.

The Acting Deputy Administrator concludes that based upon the record before him, Respondent's registration with DEA would be inconsistent with the public interest. Respondent prescribed highly abused substances for no legitimate medical purpose to purported users of cocaine. There is no indication that Respondent can now be trusted to responsibly handle controlled substances.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application submitted by Yu-To Hsu, M.D. for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective April 17, 1997.

Dated: March 10, 1997.

[FR Doc. 97–6793 Filed 3–17–97; 8:45 am]
BILLING CODE 4410–09–M

[Docket No. 95–36]

Donald P. Tecca, M.D. Continuation of Registration With Restrictions

On April 3, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald P. Tecca, M.D. (Respondent) of San Diego, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AT1241847, and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that pursuant to 21 U.S.C. 824(a)(4), his continued registration would be inconsistent with the public interest. The Order to Show Cause alleged, in essence, that: (1) in June 1992, DEA received complaints from several area pharmacies that Respondent was overprescribing controlled substances including Vicodin and codeine, and in particular, one individual has received 1,640 dosage units of Tylenol No. 3 with codeine over a three month period; and (2) on eight occasions between December 28, 1992 and May 25, 1993, Respondent prescribed controlled substances to undercover officers for no legitimate medical reason.

By letter dated April 26, 1995, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Diego, California on September 19 and 20, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On June 21, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusion of Law and Decision, recommending that Respondent's DEA registration be revoked, and any pending applications for registration be denied. Respondent filed exceptions to Judge Bittner's Opinion and Recommended Ruling, and thereafter, on August 6, 1996, the record of these proceedings was transmitted to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as noted, the findings of fact and conclusions of law of the Administrative Law Judge, but rejects the recommended ruling, for the reasons stated below.

The Acting Deputy Administrator finds that Respondent graduated from medical school in 1980, and in 1983, become board certified in internal medicine. At the time of the hearing in this matter, he was on the senior staff at three hospitals in San Diego, had consulting privileges at a psychiatric hospital in San Diego, was the chief of the Department of Medicine at one of the local hospitals, and maintained a private practice in internal medicine.

In 1992, two local pharmacists made allegations to DEA that Respondent may have been overprescribing controlled substances. While the Order to Show Cause issued in this proceeding cited this alleged overprescribing as evidence

that Respondent's continued registration would be inconsistent with the public interest, no evidence was introduced at the hearing regarding the validity of these allegations. Therefore, the Acting Deputy Administrator has only considered the pharmacists' allegations as the basis for the initiation of the investigation. Subsequently, state undercover officers made 10 visits to Respondent's office between December 1992 and July 1993 to attempt to obtain controlled substance prescriptions from Respondent for no legitimate medical purpose.

The first visit occurred on December 28, 1992, when Special Agent Roberts of the Bureau of Narcotic Enforcement (BNE) of the California Department of Justice attempted to obtain a prescription for anabolic steroids from Respondent. Before seeing Respondent, Agent Roberts filled out a patient history form on which he did not indicate any medical problems, and a nurse weighed him and took his blood pressure and pulse. The transcript of this visit indicates that Respondent asked Agent Roberts a series of medical history questions. Agent Roberts then told Respondent that he was not seeing results at the gym, that he was going to jail for a year and that he wanted to ''gain some size''. Respondent indicated that it would probably not hurt Agent Roberts to take anabolic steroids to put on muscle mass since he appeared healthy. Then, in the agent's presence, Respondent telephoned a local pharmacist seeking advice as to what to prescribe for this purpose. Respondent testified that the pharmacist told him that Anadrol was used for that purpose, but did not indicate that such use of the substance was illegal or that it was a controlled substance. Following the conversation with the pharmacist, Respondent told the agent, ''Anadrol is what they use but it's not supposed to be prescribed for this purpose.'' Respondent then consulted the 1991 edition of the Physicians' Desk Reference, which did not indicate that Anadrol was a controlled substance, to determine the proper dosage to prescribe. Respondent told Agent Roberts that, ''I don't think there's anything illegal about this, it's just frowned on because it's felt that the risk outweighs the gain.'' Respondent warned Agent Roberts of the possible side effects, advised him to discontinue taking the medication if any of the side effects occurred, and told him to return in three weeks for a blood test. Respondent then issued Agent Roberts a prescription for 120 dosage units of Anadrol with no refills, impressing upon him the need for follow-up care. Agent Roberts paid $40.00 for the office visit.

At the follow-up visit on January 19, 1993, Agent Roberts had gained a pound, his blood pressure had gone down, and he reported some strength gains. The transcript of this visit indicates that Respondent asked about various side effects, and Agent Roberts indicated that he had not experienced any side effects. Respondent examined Agent Roberts for possible liver enlargement and Respondent's nurse drew blood. Agent Roberts asked Respondent for a prescription for Cylert, a Schedule IV stimulant, because he felt that he was ''kind of dragging''. Agent Roberts testified at the hearing that he asked for Cylert because it is commonly taken by steroid users and because it was his understanding that physicians who unlawfully prescribe controlled substances will issue prescriptions for all types of controlled substances. Respondent refused to give Agent Roberts a prescription for Cylert and suggested aerobic activity instead. Respondent wrote Agent Roberts a prescription for 100 dosage units of Anadrol with three refills, told him to return in two months for a follow-up visit, and told him to call the office for the results of the blood test. Agent Roberts paid $45.00 for the office visit.

Sergeant Arvizu, then with the Medi-Cal Fraud Unit of the Department of Health Services, went to Respondent's office on two occasions, posing as Agent Roberts' girlfriend. Sergeant Arvizu had never acted in an undercover capacity before and was instructed to ask for Tylenol No. 3 with codeine (Tylenol No. 3), a Schedule III controlled substance, without telling Respondent that anything was wrong with her. There were no transcripts of these visits introduced into evidence at the hearing.

On February 8, 1993, she entered Respondent's office, told the receptionist that she was there for a check-up, filled out medical history forms indicating as her chief complaint ''check-up'', and had her weight, temperature and blood pressure taken. Sergeant Arvizu testified that when Respondent asked her why she was there, she told him that she was there for a check-up and that she wanted some Tylenol No. 3. She testified that Respondent said ''sure'' and then asked some medical history questions and checked her chest and back with a stethoscope, checked her eyes, ears, throat, and neck, and reported that she was in good health. Respondent testified that Sergeant Arvizu stated that she wanted the Tylenol No. 3 to feel good and that implicit in that request was that something was wrong with her. He testified that he performed an extensive physical examination of Sergeant Arvizu and found her to be very tense with quite a bit of muscle tenderness and rigidity. At first, Respondent testified that Sergeant Arvizu winced during the physical examination and told him that she had muscle pain, but later testified that the finding of pain was based solely upon his physical examination and her social history. Respondent's medical chart for Sergeant Arvizu indicated ''Normal exam with muscle tenderness-tension * * * Tylenol #3 for tension-muscle pain.'' Sergeant Arvizu however testified that she never told Respondent that anything was wrong with her and that there was no discussion during this visit of any muscle pain or tenderness. Judge Bittner found Sergeant Arvizu to be a credible witness and that she did not tell Respondent that she was in pain. Respondent issued Sergeant Arvizu a prescription for 40 tablets of Tylenol No. 3, ''per pain'', with no refills.

Sergeant Arvizu returned to Respondent's office on February 22, 1993, and had her weight and blood pressure taken. She testified that she told Respondent that she wanted another prescription for Tylenol No. 3 because it made her feel good. Sergeant Arvizu further testified that Respondent stated that ''this isn't really legitimate * * * it's not really legal * * * you're putting me in a bind.'' Sergeant Arvizu testified that there was then some discussion where Respondent said that something had to be wrong with her and ''he made a suggestion about a headache or a backache.'' Sergeant Arvizu also testified that she told Respondent that she had used drugs in the past, but that Respondent stated that he did not think that she was addicted to the Tylenol No. 3, however she should only use it for emergencies. Respondent testified that he conducted a brief physical examination on this occasion. His notes of the visit indicate ''some muscle tenderness'' in the neck and ''Tylenol #3 for tension Headaches—may be useful to keep her off drugs and monitor usage.'' Respondent further testified that there was no indication of any misuse of the previous prescription for Tylenol No. 3. Respondent issued Sergeant Arvizu a prescription for 48 tablets of Tylenol No. 3 with no refills, ''per pain'' and she paid the receptionist $20.00 for the visit.

Next, BNE Agent Ellis went to Respondent's office on two occasions posing as a friend of Agent Roberts and seeking Winstrol, an anabolic steroid. On his first visit on March 22, 1993, Agent Ellis filled out a patient history

form indicating no medical problems, and then a nurse took his weight and blood pressure, which was a little high. Agent Ellis then met with Respondent and told Respondent that he was referred by his friend who had gotten steroids from Respondent and that he wanted some Winstrol to help him gain strength at the gym. Respondent indicated that he knew who Agent Ellis was referring to, since he had only prescribed steroids once before. Respondent then asked some medial history questions, took Agent Ellis' blood pressure again, and stated that Winstrol is ''not totally benign'' describing the various possible side effects. Respondent told Agent Ellis that he needed to have a blood test for a baseline, but Agent Ellis was reluctant to have blood drawn. Respondent insisted that he could not give Agent Ellis the Winstrol without a blood test, since the whole point of going to a doctor is so the doctor can monitor the patient. Respondent issued Agent Ellis a prescription for 60 dosage units of Winstrol and told him to come back for a follow-up visit in a month. The transcript of this visit indicates that Agent Ellis said, ''You know if I had a good supply of these we could make lots of money,'' and Respondent replied, ''Well, I'm not interested in that. Basically, you know, I'm not interested in making money; I'm just interested that if I do a treatment, it's used properly.'' Agent Ellis paid $65.00 for the visit.

Agent Ellis returned for his follow-up visit on April 26, 1993, during which a nurse took his weight and blood pressure. Respondent discussed the results of the blood test with Agent Ellis, asked if he had experienced any side effects, to which Agent Ellis reported none, checked Agent Ellis' liver, and gave Agent Ellis information about a low-cholesterol diet. Respondent then indicated that he would give Agent Ellis a refill of the prescription, but that next month he was going to reduce the dosage. Agent Ellis then asked if he could pick up a prescription for his friend, Agent Roberts. Respondent refused to issue such a prescription and essentially told Agent Ellis that he would not issue a prescription without seeing the patient. Respondent gave Agent Ellis a prescription for 60 tablets of Winstrol and with no refills, and Agent Ellis paid $39.00 for the office visit.

On May 3, 1993, Investigator Hutchison of the Medical Board of California went to Respondent's office in an undercover capacity seeking Vicodin, a Schedule III controlled substance. Investigator Hutchison completed a patient history form on which she did not indicate any medical complaints. A nurse took her weight and blood pressure. Respondent asked Investigator Hutchison a series of medical history questions and the investigator then asked for some Vicodin explaining that she liked to take it when she went out with her friends because she did not like alcohol. She told Respondent that Vicodin made her feel relaxed and mellow. The transcript of this visit indicates that Respondent stated on more than one occasion that this was a strange request and that he had never had a request like this before. Respondent warned Investigator Hutchison of the risks of addiction and that such use could lead to abuse of other substances. Investigatory Hutchison said that she used the Vicodin infrequently. Respondent told Investigator Hutchison that if he gave her a small prescription she would not become addicted, but that she should really reconsider using the drug to relax since such use was not accepted in society. Respondent also acknowledged that it was illegal for him to give her the drug to feel good. Investigator Hutchison offered to tell Respondent that she had a headache. Respondent issued Investigator Hutchison a prescription for 30 tablets of Vicodin and charged her $40.00 for the visit. Respondent testified that he knew that Investigator Hutchison did not have a headache and that she was using the Vicodin inappropriately, but that he issued her a trial prescription to see how she would use the drug and then would try to treat her inappropriate use the drug.

Investigator Hutchison returned to Respondent's office on June 28, 1993, and asked for another prescription for Vicodin. The transcript of this visit indicates that Respondent repeatedly told Investigator Hutchison that what she was doing was wrong. Respondent discussed the dangers of addiction and that it was illegal for her to use the Vicodin for her stated purpose.

Respondent attempted to discourage Investigator Hutchison from continuing to use Vicodin the way she had been using it. Investigator Hutchison offered several times to tell Respondent that she had headaches or pain. Respondent refused to issue Investigator Hutchison a prescription and did not charge her for this visit. Investigator Hutchison testified that she believed that Respondent was trying to establish a rapport with her and counseled her on the misuse of Vicodin for illegal purposes.

Finally, BNE Agent Price made two undercover visits to Respondent attempting to obtain prescriptions for Tylenol No. 3 without indicating a medical reason for the substance. On May 25, 1993, Agent Price filled out a patient history form indicating no medical problems. Agent Price told Respondent that she had received Tylenol No. 3 about a year and a half earlier following an appendectomy, and that she usually kept some on hand. Agent Price told Respondent that she had no real pain, but used the Tylenol No. 3 for relaxation. The transcript indicates that Agent Price told Respondent that ''I work out at the gym a lot like that. When I get home I just, once in awhile I might take a pill or something.'' Agent Price further stated that it was ''not so much for aches * * * it just kind of relaxes me.'' Respondent performed a brief physical examination. Respondent told Agent Price that her request was strange and he was not sure that he approved of her using Tylenol No. 3 for relaxation since it was a pain pill, but decided that he could give her a few pills for emergencies. Respondent issued Agent Price a prescription for 30 tablets for Tylenol No. 3 with one refill and she paid $40.00 for the office visit. Respondent testified at the hearing that he was confused by Agent Price's request because she did not appear to be an addict since she was well-groomed and stated that she only used a few pills, and he had never before had anyone request Tylenol No. 3 for relaxation. Respondent further testified that he interpreted Agent Price's use of the word ''relaxation'' to mean relief from pain.

Agent Price returned to Respondent's office on July 26, 1993 and told Respondent that she was not having any pains, that she wanted the drug only for relaxation, and that she was just coming back for a refill of the Tylenol No. 3 prescription. Respondent reiterated that Tylenol No. 3 is used for pain and not relaxation, and that he did not believe that Agent Price was using the medication for relief of pain. Respondent expressed concern that Agent Price was becoming dependent on the drug and refused to issue her another prescription. Respondent did not charge Agent Price for the visit. On her chart for this visit, Respondent wrote as his assessment, ''Drug Addiction (highly likely).''

A Special Agent with BNE testified at the hearing that he had asked various knowledgeable sources, including manufacturers of anabolic steroids, the Food and Drug Administration, and the American Medical Association, whether the use of anabolic steroids to build muscle mass is appropriate, and that all

of them replied in the negative. Anabolic steroids became controlled substances under California law effective August 20, 1986, and effective February 27, 1991, anabolic steroids became a Schedule III controlled substance federally under the Controlled Substances Act. Respondent testified that before prescribing Anadrol and Winstrol to the undercover officers he consulted the 1991 edition of the Physicians' Desk Reference, which did not indicate that they were controlled substances.

The Director of Pharmacy Services at the psychiatric hospital where Respondent had consulting privileges, testified that he monitors and fills the prescriptions of doctors at the hospital and that he has known Respondent for 10 years. He further testified that he had never seen a prescription issued by Respondent for anabolic steroids and that in his opinion, Respondent's use of Tylenol No. 3 and Vicodin is very conservative and clinically appropriate. Three physicians, Respondent's supervisor, an associate professor at the University of California San Diego School of Medicine, and an internist in private practice, all testified at the hearing that his prescribing of Vicodin and Tylenol No. 3 to the undercover agents was medically appropriate, and that in 1992 and 1993, they were unaware that anabolic steroids were controlled substances. One of the doctors testified that it is a common practice to issue a trial prescription if a doctor is not sure whether a substance is being misused. Respondent's supervisor at one of the hospitals rated Respondent's medical abilities as a ten on a scale of ten. Respondent also introduced into evidence a letter from a doctor who has known Respondent for 11 years and considers him ''a most knowledgeable, conscientious and ethical physician.'' This doctor also stated in his letter that Respondent ''practiced at the standard of the community'' in his prescribing of controlled substances to the undercover officers. Respondent also introduced into evidence a letter from a physician who has known Respondent for 11 years and shared an office with him for four years, who stated that Respondent ''has consistently demonstrated high quality medical care.'' Finally, Respondent introduced a letter from a pharmacist who has known Respondent for approximately 12 years and has filled hundreds of his prescriptions. The pharmacist considers Respondent to be a ''very conscientious, dedicated, and knowledgeable physician.''

Respondent testified at the hearing that he felt that he was already conservative in his prescribing practices, but that as a result of this experience he has become even more conservative. He stated that he would never prescribe anabolic steroids again and that he has learned that he must be very cautious in his prescribing of Schedule III controlled substances.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered.

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, there is no evidence in the record of any state action taken against Respondent's license to practice medicine. Likewise, regarding factor three, there is no evidence that Respondent has even been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor, four, Respondent's experience in dispensing controlled substances, the Administrative Law Judge found that Respondent issued prescriptions to Sergeant Arvizu, Investigator Hutchison and Agent Price for no legitimate purpose. Judge Bittner found that ''Respondent prescribed Vicodin to Investigator Hutchison despite knowing any saying that doing so was illegal because she had not complained of any headache or other pain.'' Respondent testified that he diagnosed Investigator Hutchison as inappropriately using Vicodin; that he could have turned her away, but felt that his job was not to just diagnose, but to treat the problem; and that he therefore issued her a trial prescription on her first visit. Judge Bittner specifically found that ''[a]' 'trial prescription' of a controlled substance just to see how a patient will use the substance * * * is too likely to result in diversion and is not given for a legitimate medical purpose. The same is true of prescribing a controlled substance just to build a relationship with a patient.'' The Acting Deputy Administrator agrees that a DEA registrant must be extremely careful in the dispensing of controlled substances to protect against the diversion of these dangerous substances. However, the Acting Deputy Administrator does not adopt Judge Bittner's general proposition that trial prescriptions are not issued for a legitimate medical purpose. The Acting Deputy Administrator believes that every prescription must be evaluated in light of the totality of the circumstances surrounding the issuance of a prescription, and one of the physicians who testified in this proceeding indicated that it is common practice to issue trial prescriptions to see if a drug is being misused. But, the Acting Deputy Administrator does find that in this case, Respondent's prescribing of Vicodin to Investigator Hutchison during her first visit was extremely questionable and was evidence of Respondent's lax prescribing practices. Respondent admitted that he knew that Investigator Hutchison was misusing Vicodin. Therefore, there was presumably no need to issue a trial prescription.

Regarding Sergeant Arvizu, the Acting Deputy Administrator concurs with Judge Bittner's conclusion that ''Respondent prescribe Tylenol No. 3 to Sergeant Arvizu although she said she was not in pain,'' and that this prescribing was ''especially inappropriate'' since she had indicated that she had a drug abuse problem in the past, and that should have caused Respondent to be ''particularly suspicious of her specific request for Tylenol No. 3.'' Respondent himself admitted at the hearing that his experience with Sergeant Arvizu taught him that he needs ''to be very cautious in prescribing Schedule III medications.''

The Acting Deputy Administrator concludes that Respondent's issuance of a prescription to Agent Price was highly questionable given that she told him that she used Tylenol No. 3 for relaxation and not for pain. Respondent thought this was a strange request, but nonetheless issued her a prescription for the drug to keep on hand for

emergencies. The Acting Deputy Administrator finds that this prescribing is evidence of Respondent's lax practices.

Regarding Respondent's prescribing of anabolic steroids to the two undercover agents, the Acting Deputy Administrator agrees with Judge Bittner that there is no evidence in the record that Respondent knew that these were controlled substances. In addition, the record shows that Respondent advise the agents of the potential side effects from taking the steroids; required that the agents submit to blood tests for monitoring purposes; told the agents to return for follow-up visits; checked for side effects during the follow-up visits; consulted with a pharmacist regarding what substance to prescribe; and consulted the Physicians' Desk Reference regarding the proper dosage to prescribe. As will be discussed in the context of factor four, the prescribing of steroids for the purpose of building muscle mass is not a legitimate medical use, however it appears from the record that Respondent was attempting to dispense the substances in a responsible fashion.

The Acting Deputy Administrator also finds it significant, that Respondent refused one of the agent's invitations to go into the business of selling anabolic steroids, stating that he was not interested in making money, but in the proper management of the medication; that Respondent refused to issue Agent Roberts a prescription for Cylert; and that Respondent refused to give Agent Ellis a prescription for his friend who was not present, stating that he had to see the friend personally before he would issue a prescription.

Judge Bittner concluded that, ''[a]though there is no direct evidence that Respondent has done anything improper outside of the ten undercover visits that took place as part of this investigation, what occurred in those visits establishes that Respondent is lax about prescribing controlled substances and that he is likely to prescribe controlled substances for other than legitimate medical purposes in other situations.''

The Acting Deputy Administrator concurs with Judge Bittner that there is evidence in the record that, at least on some occasions, Respondent was lax in this controlled substance prescribing practices. However, there is also evidence in the record that other physicians and pharmacists, who are in positions that enable them to observe and evaluate Respondent's prescribing practices, find him to be conscientious, knowledgeable, and ethical. In addition, Respondent testified that this experience has caused him to ''become more conservative''. Therefore, unlike Judge Bittner, the Acting Deputy Administrator concludes that with proper training and monitoring, as will be discussed below, it is unlikely that Respondent will prescribe controlled substances for other than legitimate medical purposes in the future.

Regarding factor four, there is evidence in the record that Respondent prescribe control substances for no legitimate medical purpose and therefore violated 21 U.S.C. § 841(a), 21 C.F.R § 1306.04(a) and California Health and Safety Code § 11153(a). Respondent prescribed narcotic pain medication to three of the undercover agents after they specifically told him that they were not in pain. Investigator Hutchison was prescribed Vicodin after telling Respondent that she used it to ''mellow out''. Sergeant Arvizu was prescribed Tylenol No. 3 after telling Respondent that she takes it ''to feel good.'' Finally, Respondent prescribed Tylenol No. 3 to Agent Price after she told him that she used it ''for relaxation and to unwind''. DEA has previously revoked registrations based upon similar conduct. See *Mukand Lal Arora, M.D.*, 60 FR 4447 (1995) (practitioner's DEA registration was revoked upon a finding that the practitioner prescribed Vicodin to an undercover officer to mellow-out where the undercover officer did not give an indication of any medical purpose and denied any physical complaint.)

In addition, on four occasions, Respondent prescribed anabolic steroids to undercover agents for no legitimate medical purpose. A BNE Agent testified at the hearing before Judge Bittner that according to various knowledgeable sources, including manufacturers of anabolic steroids, the Food and Drug Administration, and the American Medical Association, it is not proper medical practice to use anabolic steroids to build muscle mass. DEA has previously held that the prescribing of anabolic steroids for body enhancement is a violation of California law, since it was not prescribed for a legitimate medical purpose. See *John W. Copeland, M.D.*, 59 FR 47,063 (1994).

The Administrative Law Judge concluded ''that the record as a whole establishes that Respondent's continued registration would be inconsistent with the public interest.'' Judge Bittner further concluded that ''[u]ntil Respondent can demonstrate that he acknowledges that his decisions were wrong and understands why and has taken concrete steps to prevent it from happening again, allowing him to dispense controlled substances presents to great a risk that controlled substances will be diverted into illicit channels.'' Therefore, Judge Bittner recommended that Respondent's DEA registration be revoked.

Respondent argues in his exceptions to Judge Bittner's Recommended Ruling that the Government did not meet its burden of proof; that a preponderance of the evidence shows that Respondent's continued registration is consistent with the public interest; that Judge Bittner's interpretation of the evidence was ''one-sided'' and ''unfair''; that a re-examination of the evidence refutes that Respondent was lax in his prescribing practices or would be so in the future; and that Respondent has accepted full responsibility for his actions. In his exceptions, Respondent provided detailed citations to the record in support of his arguments, and provided evidence of what he has done since the hearing ''to avoid any similar incidents in the future''. In addition, Respondent suggested an alternative resolution to complete revocation, whereby certain restrictions would be placed on his DEA registration.

The Acting Deputy Administrator has not considered the new information in the exceptions submitted by Respondent that was not part of the record derived from the hearing. Exceptions are a vehicle for pointing out perceived errors in the recommended decision of the Administrative Law Judge and not a vehicle for introducing evidence not admitted through testimony and/or exhibits at the hearing. Respondent could have filed a motion to reopen the record had he wanted this new information considered.

However, the Acting Deputy Administrator has carefully considered the entire record in this proceeding, including Respondent's exceptions to Judge Bittner's recommended decision, and concludes that while the Government established a prima facie case based upon Respondent's lax prescribing of controlled substances to the undercover officers, complete revocation of Respondent's registration is not necessary at this time to protect the public interest. Evidence of Respondent's lax prescribing practices appears to be limited to the prescriptions provided to the undercover officers. Respondent testified at the hearing that in hindsight he should not have prescribed some of the substances to the undercover officers, and that he has become more conservative in his prescribing practices. Therefore, the Acting Deputy Administrator finds that Respondent's actions do not warrant complete revocation of his DEA registration.

Nonetheless, a DEA registration carries with it the responsibility to ensure that controlled substances are only prescribed for a legitimate medical purpose thereby preventing the diversion of these potentially dangerous substances from legitimate channels. Therefore, the Acting Deputy Administrator concludes that some monitoring of Respondent's controlled substance handling practices and some training in the proper handling of controlled substance is necessary to protect the public health and safety.

Thus, the Acting Deputy Administrator concludes that Respondent's DEA registration should be continued subject to the following conditions:

(1) For a period of two years from the effective date of this order, Respondent shall be required to submit to the DEA San Diego Field Division for review every three months, a log of his prescribing, dispensing and administering of controlled substances. This log shall include, at a minimum, the date of the prescribing, dispensing and administering, the name of the patient, and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed.

(2) Within three months of the effective date of this order, Respondent shall provide to the DEA San Diego Field Division evidence of the successful completion of at least 24 hours of training in the proper handling of controlled substances.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AT1241847, issued to Donald P. Tecca, M.D., be continued, and any pending applications be granted, subject to the above conditions. This order is effective April 17, 1997.

James S. Milford,

Acting Deputy Administrator.

Dated: March 4, 1997.

[FR Doc. 97–6795 Filed 3–17–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 96–31]

Anne Lazar Thorn, M.D. Revocation of Registration

On April 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Anne Lazar Thorn, M.D. (Respondent), of Lafayette, Louisiana, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AT6512152, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that effective October 18, 1993, the Louisiana State Board of Medical Examiners indefinitely suspended her license to practice medicine and as a result, she is not currently authorized to handle controlled substances in the State of Louisiana.

By letter dated April 29, 1996, Respondent, acting pro se, filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On May 3, 1996, Judge Bittner issued an Order for Prehearing Statements. On May 24, 1996, in lieu of filing such a statement, the Government filed a Motion for Summary Disposition and to Stay Proceedings, asserting that ''Respondent is without state authorization to handle controlled substances at this time.'' Attached to the motion was a copy of the Louisiana State Board of Medical Examiner's (Board) decision dated October 18, 1993, indefinitely suspending Respondent's license to practice medicine and a copy of a letter from the Board notifying DEA that Respondent's license to practice medicine in the State of Louisiana was suspended.

On June 3, 1996, the Administrative Law Judge received a letter from an attorney indicating that he had been retained to represent Respondent, and on June 21, 1996, counsel for Respondent filed a Memorandum in Opposition to Government's Motion for Summary Disposition and Motion to Stay Proceedings. Respondent did not deny that she is currently without authority to handle controlled substances in the State of Louisiana. However, she argued that 21 U.S.C. 824(a) provides for the Deputy Administrator to use his discretion in determining whether to revoke or suspend a registration because of lack of state authority to handle controlled substances and that a hearing is necessary to determine what action should be taken against Respondent's registration. Respondent further argues that this matter is not yet ripe for determination since Respondent has not ''had the opportunity to present her evidence with supporting testimony concerning her current fitness to practice medicine, or the steps which she is taking to seek the reinstatement of her license to practice medicine in the State of Louisiana.''

On July 25, 1996, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent is not currently authorized to handle controlled substances in the State of Louisiana; that she is bound by DEA's interpretation of the Controlled Substances Act that, pursuant to 21 U.S.C. 823(f) and 802(21), a petitioner may not hold a DEA registration without state authority to handle controlled substances; that since no material question of fact is involved, a hearing is not necessary; and that while the statue provides for the revocation *or* suspension, revocation is appropriate in this case since there is no indication that Respondent's state license will be reinstated any time soon. Accordingly, Judge Bittner granted the Government's Motion for Summary Disposition and recommended that the Respondent's DEA Certificate of Registration be revoked.

On August 8, 1996, Respondent filed with the Administrative Law Judge a Motion for Reconsideration and/or to Alter or Amend Judgment (Motion for Reconsideration). Respondent argued that the Board suspended her license indefinitely, rather than revoking it entirely, and that it would remain suspended until further order of the Board. Respondent asserted that the only evidence before the Administrative Law Judge in rendering her recommended decision was the order of the Board dated October 18, 1993 and that ''a great deal has transpired with respect to Respondent's license to practice medicine and the steps she has taken to have her license reinstated.'' Respondent argued that she should be given an opportunity for a hearing regarding her DEA registration in order to outline the steps she has taken to have her state license reinstated, and that the evidence which would have been presented at a hearing would have aided the Administrative Law Judge in deciding whether to recommend revocation or suspension of Respondent's registration. Respondent contended that ''the decision to permanently revoke a physician's registration to distribute drugs is a serious sanction, and is one which should not be rendered without considering all of the evidence in a particular case.''

Therefore, Respondent requested that the Administrative Law Judge reconsider her decision to deny Respondent the opportunity for a hearing, or in the alternative, that the Administrative Law Judge alter her recommendation from revocation to

suspension of Respondent's registration. On August 14, 1996, Judge Bittner issued a Ruling denying Respondent's Motion for Reconsideration as lacking in merit. Neither party filed exceptions to her Opinion and Recommended Decision, and on August 26, 1996, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

DEA has consistently interpreted the Controlled Substances Act to preclude a practitioner from holding a DEA registration if the practitioner is without authority to handle controlled substances in the state in which he/she practices. See 21 U.S.C. 823(f) (authorizing the Attorney General to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substances under the laws of the state in which he or she practices); and 21 U.S.C. 802(21) (defining a practitioner as one authorized by the United States or the state in which he or she practices to handle controlled substances in the course of professional practice or research). This prerequisite has been consistently upheld. See Rita M. Coleman, M.D., 61 FR 35,816 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Roy E. Hardman, M.D., 57 FR 49,195 (1992); and Bobby Watts, M.D., 53 FR 11,919 (1988).

The Acting Deputy Administrator finds that the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances in the state. In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the State of Louisiana. Therefore, as Judge Bittner notes, Respondent ''is not currently entitled to a DEA registration.''

The Acting Deputy Administrator concludes that Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in Louisiana. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom. Kirk versus Mullen, 749 F.2d 279 (6th Cir. 1984); Alfred Tennyson Smurthwaite, M.D., 43 FR 11,873 (1978); see also NLRB versus International Association of Bridge, Structural and Ornamental Ironworks, AFL–CIO, 549 F.2d 634 (9th Cir. 1977); United States versus Consolidated Mines & Smelting Co., 44 F.2d 432 (9th Cir. 1971).

In her Motion for Reconsideration, Respondent argued that the permanent revocation of a registration is a serious sanction and ''should not be rendered without considering all of the evidence in a particular case.'' The Acting Deputy Administrator notes that the revocation of Respondent's registration is not permanent. Respondent may reapply for a new DEA registration when her state privileges to handle controlled substances are reinstated. Further, the Acting Deputy Administrator recognizes that he has the discretionary authority to either revoke or suspend a DEA registration. However, given the indefinite nature of the suspension of Respondent's state license to practice medicine, the Acting Deputy Administrator agrees with Judge Bittner that revocation is appropriate in this case.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AT6512152, issued to Anne Lazar Thorn, M.D., be, and it hereby is, revoked, and that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective April 17, 1997.

Dated: March 4, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–6794 Filed 3–17–97; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

[OJP(BJA)–1116]

RIN 1121–ZA62

State Criminal Alien Assistance Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice is to request comment on the proposed guideline on the application process for States and political subdivisions to obtain reimbursement for the incarceration of undocumented criminal aliens under the State Criminal Alien Assistance Program.

DATES: Comments on this proposed guideline must be received on or before April 22, 1997.

Final guidelines and application information will be published and issued within 30 days of the end of this comment period and applicants will be given at least 30 working days to make that application.

ADDRESSES: Comments may be mailed to: Office of Justice Programs, Office of the General Counsel, 633 Indiana Avenue, NW, Room 1245, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Linda James McKay, SCAAP Coordinator, State and Local Assistance Division, Bureau of Justice Assistance, or the Department of Justice Response Center, 1–800–421–6770 or 202–307–1480.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided: The State Criminal Alien Assistance Program (SCAAP) provides reimbursement for certain criminal aliens who are incarcerated in State and local correctional facilities. The program is administered by the Bureau of Justice Assistance (BJA), which is part of the Office of Justice Programs (OJP) in the Department of Justice. The program is authorized and governed by the provisions of the Immigration and Nationality Act of 1990, as amended, 8 U.S.C. 1251(i), originally enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) at section 20301.

This section provides the authority, at the option of the Attorney General whenever an appropriation is made, to either reimburse States and localities for costs incurred in incarcerating qualifying criminal aliens or take such aliens into Federal custody. For Fiscal Year 1997 (FY 1997), the Attorney General has delegated the authority to implement the program to BJA. BJA is a criminal justice grant making and administrative agency within the Department of Justice and, thus, has no ability to take custody. Therefore, SCAAP will continue to be administered only as a reimbursement program. For FY 1997, $500,000,000, less administrative costs, is available for reimbursement payments under SCAAP.

For FY 1997, records related to all foreign-born inmates with one felony or two misdemeanor convictions who are or have been incarcerated within a State

or local correctional facility during a specified one-year period should be included in an applicant's claim for an award. All State or local jurisdictions which have facilities housing such aliens for periods over 72 hours will be eligible. Applicants must provide inmate-specific information for comparison with records maintained by the Immigration and Naturalization Service (INS). Award amounts will depend on the number of reimbursable aliens verified by INS, on the lengths of stay of those aliens in the applicant's facilities, and on the applicant's costs of incarceration. Last year, reimbursement was approximately 60 percent of the amount claimed by applicants for verified, reimbursable aliens.

FY 1997 will be the third fiscal year in which funding for SCAAP has occurred. In each of these years, there have been changes to the authorization for SCAAP and modifications in data gathering and formal application procedures. Because of these changes, BJA is issuing its proposed model for distributing FY 1997 SCAAP funds to allow and encourage comment by potential applicants and other interested parties.

Comment is particularly requested about the methodology to be used to count inmates who fit within the criteria for reimbursement and the types of data elements about those inmates that must be provided for INS verification. The ability of eligible applicants to access necessary criminal history information and the completeness and accuracy of that information is also a critical area that should also be addressed, as it will be relevant to the provision of requested data (see subsection 2 below). Comment on any other aspect of this proposed distribution model is also welcome.

BJA is attempting to increase the body of information available about all incarcerated criminal aliens, to ensure that the data underlying its awards are complete and accurate, without establishing requirements for data submission that are overly burdensome for applicants. For these reasons, the model proposed expands the types of data required while streamlining the methodology for obtaining that data.

1. Eligible Applicants

Eligible applicants are States and political subdivisions of States (hereafter, ''localities'' or ''subdivisions'') that exercise authority with respect to the incarceration of an undocumented criminal alien in a facility that provides secure, overnight custody of inmates for periods extending beyond 72 hours. Only one application may be submitted by each locality; therefore, cost and inmate information from all facilities within a single subdivision must be consolidated into a single application.

The applicant may be either the chief executive officer (CEO) (e.g., governor, county executive, mayor) of the political subdivision itself or the head (e.g., director, commissioner, sheriff, etc.) of the correctional facility in that jurisdiction, pursuant to a delegation from the CEO. Such delegation must be in writing and be submitted to BJA by the CEO or correctional agency head applying on behalf of the jurisdiction. A copy of a valid delegation previously obtained and submitted to BJA for the purpose of SCAAP will be acceptable.

Awards will be made to the place of business of the signatory on the application, regardless of designation. That is, if the county board chair (or county manager, county auditor, etc.) will be signing the application, the formal applicant would be the county, at the address of the county office. If the county sheriff will be signing the application pursuant to delegation from the county board, the formal applicant would be the sheriff, and the award will go directly to the address of the sheriff (or county correctional facility).

For the purposes of the remainder of this guidance, ''applicant'' refers to the head of the correctional facility housing the alien inmates, as this facility is the source of both inmate and cost data required for the application.

2. Reimbursable Inmates and Length of Stay Calculation

Applicants will be expected to submit records on all inmates in their custody who have a foreign country of birth and who have been convicted of a felony or two misdemeanors. Applicants should not screen out aliens known or believed to be nonreimbursable. The methodology for determining reimbursability of unmatched inmates (as discussed in subsection 4 below) will not depend on the ratio of reimbursable to nonreimbursable inmates, as was the case in prior years. This change means that applicants will not be required to make any judgments about the potential reimbursability of their incarcerated aliens.

Not all foreign born inmates whose records are submitted will be determined to be reimbursable aliens under the law. To be reimbursable, an inmate must:

- *Have a foreign country of birth.* The record submitted must contain the name of that foreign country. See the discussion under subparagraph 4 below for proposed rules for submitting and verifying suspected foreign-born inmates who do not self-report a foreign country of birth.
- *Have been in the applicant's custody at some point between July 1, 1996, and June 30, 1997.* Only the number of days in custody during this time period may be counted toward the length of stay for that inmate. Thus, a cap of 365 days will be imposed on the number of days which an applicant may claim for a single inmate.
- *Have been in the applicant's custody for a period exceeding 72 hours.* Police ''lockups'' and similar holding facilities are excluded, and the applicant would not be expected to submit records for persons held pending arraignment on new charges who are then released and not again incarcerated. However, once the facility has exercised custody over an inmate beyond 72 hours, all time in custody may be included in the length of stay reported for an otherwise qualified inmate, as defined in this section.
- *Have one felony conviction or two misdemeanor convictions.* Qualifying conviction(s) can occur prior to entry into the applicant's custody or be the result of charges that led to that incarceration. In the case of aliens who entered with previous qualifying convictions, all time in custody during the specified one-year period may be counted, regardless of the disposition of the charges which led to the current incarceration. In the case of aliens who did not have the qualifying conviction(s) before entering into applicant's custody, only the time spent during the one-year period in applicant's custody after the qualifying conviction occurs may be counted, unless the inmate is also sentenced during the specified year period to some sentence (e.g., ''time served'') which converts the pretrial custody period into part of the final disposition for purposes of fulfilling the sentence. In this situation, all time in custody can be counted.

Please note that, in either case, the applicant must be able to determine and document that the qualifying convictions have taken place. Thus, particularly for those inmates for whom the qualifying conviction(s) occurred prior to entry into applicant's custody, the applicant must have ready access to accurate and complete criminal history information.

For the purposes of this determination, the applicant should follow its own State law as to what constitutes a felony or misdemeanor and what actions constitute a valid conviction. If a State has no set definition of ''felony,'' a felony should be considered any offense for which the

potential sentence that could be imposed upon conviction is more than one year.

• *Fall within one of three categories specified in the statute:*

• *Entered the United States without inspection* or at any time or place other than as designated by the Attorney General;

• *Was the subject of exclusion or deportation proceedings at the time he or she was taken into custody* by the State or a political subdivision of the State; or,

• *Was admitted as a nonimmigrant and at the time he or she was taken into custody* by the State, or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted (or to which it was changed) or to comply with the conditions of any such status.

In determining who is the ''subject of'' proceedings under the second category, an alien would be considered eligible to be counted for reimbursement if the charging document had been issued by INS prior to that alien's entry into the applicant's custody. The charging document need not be served against the alien nor filed with the immigration court. Alien inmates with final orders of deportation or exclusion will also be considered the ''subject of'' proceedings. Cubans who entered the United States as part of the 1980 Marielito boatlift (''Mariel Cubans'') are not separately eligible and will not automatically be included for reimbursement; rather, Cuban inmates, as all other inmates, will be reimbursable only to the extent they fall under one of the categories listed above.

3. Specification for Inmate Records

The applicant will have two options for providing information about inmates: (1) Applicants may use their own data system to produce a properly formatted data file, or (2) applicants may reenter data into a database shell on a diskette to be provided by BJA. For applicants choosing the first option, all inmate data submitted must be in ASCII format, in fixed length fields. Further, unless a specific exception is noted below, all data fields must be completed. Failure to provide the requested data in the proper format will result in exclusion of the record from the verification process. Exact information on the order and length of data fields will be provided in the final instructions.

The following data will be requested:

• *Alien (''A'') number.* An ''A'' number is an 7-, 8-, or 9-digit number which may or may not have been assigned to an inmate by INS and be known to the applicant. If no A number is available, the applicant may leave this field blank.

• *First, middle, and last names of the inmate, including all aliases.* A separate record will be required for each alias.

• *Unique identifying number for each inmate.* This number will allow INS to check separate alias records, but avoid duplicate counting of the same inmate. The number will be assigned to that inmate by the applicant and will generally be used by the applicant for other identification purposes.

• *Date of birth.* If more than one date of birth is provided, a separate record should be used for each date, as in the case of different names.

• *Foreign country of birth.* Applicants should supply the actual name of the foreign country (at least the first 10 letters of the name will be required) or use a coding system. If a coding system is used, applicants must submit documentation of the codes as part of their applications.

• *Date upon which the alien entered into the applicant's custody.* This date will be a required field for all inmates, not just those potentially qualifying under the ''subject of proceedings'' category.

• *Type and level of crime of the qualifying conviction(s).* Applicants will be expected to code the qualifying felony or misdemeanor convictions utilizing the Federal Bureau of Investigation's (FBI's) National Criminal Information Center (NCIC) coding scheme. Both of the qualifying misdemeanors will need to be coded. More specific directions for accessing and utilizing these codes will appear in the final guidance for application. These instructions will also address the issue of which among possible qualifying convictions should be coded.

Because this will be the first year in which the qualifying offenses will need to be submitted, and because of the specificity and reliability that would result from use of NCIC codes for all offenses, BJA particularly solicits comment by potential applicants on their ability to provide this data in the form requested.

• *Actual length of stay in the applicant's custody between July 1, 1996 and June 30, 1997 that is ''qualifying'' under the criteria set forth in subsection 2 above.* Applicants will be expected to specify the exact number of days of incarceration for each inmate. Unlike last year, no predetermined, standard lengths of stay will be allowed. Both State and local facilities will be expected to comply with this requirement.

• *Earliest possible release date for the inmate, if that inmate is currently serving a sentence in applicant's custody.* This field may be left blank if the inmate is in pretrial status (but has the qualifying prior felony or two misdemeanor convictions) or has been convicted but not yet sentenced for the charge(s) which brought the inmate into applicant's custody, or if the determination will be made by a State facility after transfer of a sentenced inmate from a local to a State facility.

• *FBI number.* This information will not be a required but is data that will increase the probability of a positive match between applicant and existing INS records.

In addition, each applicant will be preassigned a jurisdictional identification number that must appear on the diskette label and as part of every record submitted. This number must also appear on the formal application document. Other data that might be useful in making positive identifications of inmates may be requested, but will not be required.

Applicants that cannot provide data on lengths of stay for all inmates incarcerated during the one-year period will be allowed to do a one-day count at any point during the application period. However, they may only claim the lengths of stay for the inmates who were incarcerated on the day of that count. This option should only be used if it is impossible to provide full-year data, because it is very likely to result in a lower level of reimbursement than would use of the preferred method.

4. Verification of Inmate Data

INS will verify applicants' inmate records by matching those records to records in INS databases. The matching process will result in three groups of inmates: Positively identified reimbursable inmates, positively identified nonreimbursable inmates, and inmates not matched.

A reimbursement rate will be applied to inmates whose eligibility cannot be determined through a positive match. Unlike in prior years, this rate will not be based on the ratio of matched reimbursable to nonreimbursable inmates whose records are submitted by the applicant, but rather will be based on a separate process. The INS is currently working to gather data that will produce an estimate of the proportion of unmatched inmates who are likely to be eligible for reimbursement. The estimate will likely be based on the information about the immigration status of criminal aliens interviewed during the last year who previously did not have files in INS

databases. Depending on the results of this study, a single, nationwide rate will probably be developed, although it is possible that regional or state-specific rates will be necessary. This new procedure is expected to allow more uniformity among applicant submissions while being equitable to all applicants.

Applicants who have a reasonable basis to believe that an inmate has falsely claimed to have been born in the United States or its territories and possessions (e.g., Guam, Northern Mariana Islands, the Virgin Islands, Puerto Rico) may include those inmates in their data submissions. Similarly, applicants may include in their submissions inmates for whom they have no known country of birth. If INS is able to match these inmate records, they will be retained as part of the applicants' submissions. However, if INS is unable to match the inmates with no foreign country of birth provided, those inmate records will be deleted from the applicants' submissions. Aliens whose records are deleted from a submission will not be included in the pool of unmatched inmates to which the special reimbursement rate is applied.

5. Cost of Inmate Custody

Only routine operating expenditures will be allowed as part of the calculation of annual inmate costs; capital expenditures and nonroutine costs will not be allowed. Cost calculations should be based on routinely maintained cost figures for all qualifying facilities administered by the political subdivision making application, not on costs directly associated with alien inmates claimed. The costs should be calculated based on the average number of bed spaces filled in all facilities under the applicant's control over the course of the year, not on an average of the costs of running each separate component facility.

In making calculations, all payments, including Federal payments, to the applicant from other jurisdictions to cover costs of housing inmates for those other jurisdictions must be deducted from the overall prisoners' upkeep costs. Payments made by the jurisdiction to other jurisdictions to house their inmates can be added to the cost figures. Similarly, services provided within facilities but not charged to the budget of the correctional agency (e.g., vocational training funded through the State's department of education) should not be included. Nor should applicants use inmate cost rates negotiated with Federal or State or other jurisdictions as their basis of claim. Rather, calculations should be based on their own actual costs of inmate custody for the current or the immediately prior fiscal year.

BJA will review and compare inmate cost figures submitted. If requested to do so by BJA, the Department of Justice, or any other authorized auditor, applicants must be able to provide the detailed information that went into their claimed costs calculation.

6. Formal Application and Deadline for Application

Application kits with final instructions will be mailed directly to correctional facilities (unless BJA has been notified by an eligible jurisdiction to provide the kit to another office) and will consist of a formal application form, required Federal assurances and certifications, and a diskette for provision of inmate data (at the applicant's option; see subsection 3 above). An original, signed delegation from the CEO of the jurisdiction will also be required if the applicant is not the CEO. If both the CEO and the designated signatory for the jurisdiction are the same as reflected in prior applications under this program in FY 1995 or FY 1996, a copy of the previously submitted delegation will be acceptable.

As was the case last year, BJA anticipates requesting a mix of electronic and hardcopy documentation as part of the application package. All inmate data must be submitted in electronic form (on diskette). A scannable, hardcopy application form will be used to obtain basic information on the applicant (e.g., address, contact person, etc.). Separate, hardcopy certifications and assurance forms may be used, or the scannable application form may contain the necessary standard certifications. In any event, the applicant will be required to provide all inmate and cost information necessary for BJA to make the award, as is described in this announcement.

In a change from last year, the deadline for submission of both inmate data and the other application documents will be on the same date. This date will be a firm deadline (evidenced by postmark); no extensions of this deadline will be given and late submissions of inmate diskettes will not be allowed. Applicants will be given at least 30 working days to complete the required application. During the application period, BJA staff will provide technical assistance to potential applicants preparing the inmate data diskettes and will be available to answer any questions that applicants may have about filling in the formal application documents. After applicants have met the deadline, BJA reserves the right to ask for additional information to clarify or correct minor errors in the application.

7. Award Calculation and Funding Availability

The FY 1997 amount available for distribution is $492,038,000. As in past years, the formula for award calculation will, first, establish the final dollar claim of each applicant, based on the verification of its inmate and cost data. This calculation will involve multiplying the number of reimbursable inmates (including a percentage of inmates not matched) by the lengths of stay for these inmates by the applicant's actual annual cost per day per inmate. The final claims for all applicants will then be totaled and divided into the available appropriation to determine the percentage payoff on the dollar of each claim. Finally, the award amount for each applicant will be calculated based on that payoff percentage.

Applicants cannot be assured of receiving an award, however, because it is possible that, following INS verification of inmate data, there will be no reimbursable inmates upon which to base an award. Similarly, past reimbursements should not be used to predict future reimbursements because the number of applicants may vary and the eligibility criteria have changed in each of the three years of this program's operation.

8. Award and Post-Award Processing

BJA will continue to utilize grants as its reimbursement mechanism. The conditions governing general award eligibility, drawdown, and use of funds after drawdown, and the processes used for these events will remain the same as in the past year. In particular, all payments to applicants will be made electronically. New applicants will be expected to provide information to allow electronic transfer of funds as part of their award acceptance. Grant closeout will be automatic. Award funds, once properly distributed to eligible applicants, may be used by these jurisdictions for any lawful purposes and need not be applied towards reimbursement of correctional costs.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 97–6740 Filed 3–17–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 13, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ([202] 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.
Title: Work Schedules Supplement to the Current Population Survey.
OMB Number: 1220–0119.
Frequency: One-time.
Affected Public: Individuals or households.
Number of Respondents: 48,000.
Estimated Time Per Respondent: 4.5 minutes.
Total Burden Hours: 3,600.
Total Annualized capital/startup costs: 0
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The work schedules supplement will gather information on the work schedules of employed persons and on the number of characteristics of employed persons who do work at home.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–6811 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–33,213]

Burwood Products Company Traverse City, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 24, 1997 in response to a worker petition which was filed on February 24, 1997 on behalf of workers at Burwood Products Company, locate in Traverse City, Michigan.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–33,205). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of February, 1997.

Russel T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–6814 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of February, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 02/24/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Products
33,213	Burwood Products Co (Comp)	Traverse City, MI	02/10/97	Clocks & Wall Decor.
33,214	EOS Corp (Comp)	Camarillo, CA	02/10/97	Power Supplies.
33,215	Deckers Outdoor Corp (Comp)	Goleta, CA	02/07/97	Sport Sandals.
33,216	Gruen Marketing Corp (Wkrs)	Exeter, PA	02/01/97	Warehousing, Packaging and Shipping.
33,217	Leslie Fay Companies (Comp)	Laflin, PA	02/14/97	Ladies' Dresses.
33,218	Leslie Fay Companies (Comp)	New York, NY	02/14/97	Office & Management (Ladies' Dresses).

APPENDIX.—PETITIONS INSTITUTED ON 02/24/97—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Products
33,219	Tectonic Industries, Inc (UAW)	Berlin, CT	02/05/97	Extruded Plastics Eyeglass Frame Parts.
33,220	Spenco Manufacturing (Comp)	Glenville, WV	02/10/97	Sewing Furniture Liners & Pads.
33,221	Norco/Jeld Wen (Wkrs)	Marenisco, MI	02/06/97	Wood Patio Doors.
33,222	Coltec Industries (Comp)	Roscoe, IL	02/04/97	Electronic Boards and Magnetos.
33,223	Camp, Inc (Wkrs)	Jackson, MI	02/04/97	Medical Garments.
33,224	Personal Products Co. (UPIU)	North Brunswick, NJ	02/02/97	Internal and External Sanitary Prod.
33,225	Goodyear Tire and Rubber (USWA)	East Gadsden, AL	02/04/97	Replacement Tire for Cars & Trucks.
33,226	Crewe Garment (UNITE)	Crewe, VA	02/05/97	Children's Dresses.
33,227	National Sportswear (Wkrs)	Chicago, IL	02/11/97	Ladies' Uniform Blouses.
33,228	ANR Pipeline (Wkrs)	Chickasha, OK	02/05/97	Gas Transportation (Pipeline).
33,229	Avesta-Sheffield East (USWA)	Baltimore, MD	02/07/97	Stainless Steel Plates & Coils.

[FR Doc. 97–6817 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–33,207]

Gruen Marketing Corporation Exeter, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 1997 in response to a worker petition which was filed on behalf of workers and former workers at Gruen Marketing Corporation, located in Exeter, Pennsylvania (TA–W–33,207).

On February 26, 1997, the Department of Labor issued a determination on behalf of the petitioning group of workers at Gruen Marketing Corporation, located in Exeter, Pennsylvania (TA–W–33,216). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–6813 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 02/18/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,194	Hasbro, Inc (Comp)	Pawtucket, RI	02/07/97	Toys, Games & Infant Products.
33,195	Reynolds Metals Company (Wkrs)	Fulton, NY	01/21/97	Cans for Miller Brewing Co.
33,196	General Electric Company (Wkrs)	Ft. Edward, NY	02/03/97	Capacitors.
33,197	Mason Distributors, Inc (Wkrs)	Hasbrovck Hgts., NJ	01/25/97	Packing & Dist. of Medicine & Vitamins.
33,198	Imation (Wkrs)	Weatherford, OK	01/28/97	Computer Diskettes.
33,199	Centerstar Manufacturing (Wkrs)	Oxford, AL	01/31/97	Knitted, Dye, Finish Cut & Sewed T-Shirt.
33,200	Yocom Knitting Company (Wkrs)	Pottstown, PA	02/03/97	Tee Shirts.
33,201	Cedarapids, Inc (Wkrs)	Pocatello, ID	01/31/97	Rock Processing Equipment.
33,202	Allied Signal (UAW)	Charlotte, NC	12/16/97	Valves, compressors—Heavy Trucks.
33,203	Chevron U.S.A. (Comp)	Tulsa, OK	02/07/97	Natural Gas Liquids.
33,204	J and J Group, Inc (Comp)	Franklin, WV	01/30/97	Ladies' Dresses, Jackets & Pants.
33,205	Burwood Products Co (Wkrs)	Traverse City, MI	01/30/97	Clocks—Wall Decor.
33,206	Juki Union Special, Inc (Wkrs)	Wayne, NJ	01/06/97	Industrial Sewing Equip. Sales & Dist.
33,207	Gruen Marketing Corp (Wkrs)	Exeter, PA	02/04/97	Markets Watches.
33,208	Great Western Malting Co. (Comp)	Vancouver, WA	02/03/97	Beer Malt.

APPENDIX.—PETITIONS INSTITUTED ON 02/18/97—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,209	Parker Abex Aerospace (UAW)	Kalamazoo, MI	02/01/97	Aerospace Components.
33,210	Singer Furniture Co. (Wkrs)	Lenior, NC	02/04/97	Bedroom and Dining Room Furniture.
33,211	General Motors Corp (Wkrs)	Goleta, CA	02/03/97	Turrets—Light Armored Vehicles.
33,212	Getinge Castle (Wkrs)	Mercersburg, PA	02/06/97	Hospital Disinfectant Equipment.

[FR Doc. 97–6818 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

Kingstree Knits, a Division of Texfi Industries, Incorporated; TA–W–32,561 Midway, GA and TA–W–32,516E Kingstree, SC

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 1996, applicable to workers of Kingstree Knits, a Division of Texfi Industries, Incorporated, located in Midway, Georgia. The notice was published in the Federal Register on October 1, 1996 (61 FR 51303). The worker certification was subsequently amended to include workers at other production facilities of the subject firm.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that workers separations have occurred at the subject firm's Kingstree, South Carolina location. The workers produce tee shirts for women, men and boys.

The intent of the Department's certification is to include all workers of Kingstree Knits who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Kingstree Knits, a Division of Texfi Industries, Incorporated, located in Kingstree, South Carolina.

The amended notice applicable to TA–W–32,561 is hereby issued as follows:

All workers of Kingstree Knits, a Division of Texfi Industries, Incorporated, Midway, Georgia (TA–W–32,561) and Kingstree, South Carolina (TA–W–32,561E), who became totally or partially separated from employment on or after July 11, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–6819 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement of the collection of the Worker Adjustment Annual Substate Area Report, ETA Form 9046. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 19, 1997. The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Zenowia Choma, Office of Worker Retraining and Adjustment Programs, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Worker Adjustment Annual Substate Area Report provides information on the available funds, expenditures and participants at the substate area level during the course of a program year.

II. Current Actions

This is a request for OMB approval of the reinstatement of a collection of information previously approved by OMB. The reinstatement will allow the Department to continue to monitor performance of the formula programs under Title III at the local level.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: Worker Adjustment Annual Substate Area Report.

OMB Number: 1205–0346.

Affected Public: State, Local or Tribal Government.

Total Respondents: 52.

Frequency: Annually.

Average Time per Response: 1.

Estimated Total Burden Hours: 52.

Comments submitted in response to this comment request 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.

Shirley M. Smith,

Acting Administrator, Office of Work-Based Learning, Employment and Training Administration.

[FR Doc. 97–6810 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than March 28, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than March 28, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of March, 1997.

Russell Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Printpact	San Leandro, CA	01/31/97	NAFTA–1,467	Print labels on foil packaging.
Envisions (Engineering Visions Inc.)	Harlingen, TX	01/31/97	NAFTA–1,468	Image base data processing.
Medite	White Coty, OR	01/31/97	NAFTA–1,469	Lumber.
Milltown Manufacturing	Red Boiling Springs, TN.	01/23/97	NAFTA–1,470	Jeans.
Brownsville Manufacturing	Brownsville, TX	02/03/97	NAFTA–1,471	Men's dress and casual pants.
Northway Products	Rensselaer, IN	01/31/97	NAFTA–1,472	Bathroom furniture.
Joyce Sportswear Company	Gary, IN	02/03/97	NAFTA–1,473	Women's clothing.
Quality Park Products	St. Paul, MN	02/03/97	NAFTA–1,474	Envelopes.
Sahara Sportswear	El Paso, TX	02/05/97	NAFTA–1,475	Golf bags.
Sun Apparel	Concepcion, TX	02/10/97	NAFTA–1,476	Garments.
ITT Cannon	Santa Ana, CA	02/10/97	NAFTA–1,477	Electronic connectors.
Activewear Co.	Athens, GA	02/10/97	NAFTA–1,478	Ladies garments.
General Motors	Goleta, GA	02/10/97	NAFTA–1,479	Electronics.
CMI Industries	El Paso, TX	02/17/97	NAFTA–1,480	Womens' blazers, pants, and shirts.
Crewe Garment	Crewe, VA	02/10/97	NAFTA–1,481	Clothing.
Singer Furniture	Lenoir, NC	02/07/97	NAFTA–1,482	Bedroom and dining room furniture.
Alsea Veneer	New Port, OR	02/06/97	NAFTA–1,483	Green and dry veneers.
Trulife	Jackson, MT	02/04/97	NAFTA–1,484	Orthopedic products.
Norco Jald Wan	Marenisco, MI	02/10/97	NAFTA–1,485	Wood patio doors.
Burwood Products Co.	Traverse City, MI	02/07/97	NAFTA–1,486	Clocks and wall decor.
Earthgrains Merico	Clayton, MO	02/11/97	NAFTA–1,487	Refrigerated dough products.
Gruen Marketing	Exeter, PA	02/12/97	NAFTA–1,488	Watches.
Allied Signal Laminate Systems	Lacrosse, WI	02/09/97	NAFTA–1,489	Electronic.
National Sportwear	Chicago, IL	02/12/97	NAFTA–1,490	Sportswear.
Diesel Recon	Charleston, SC	02/03/97	NAFTA–1,491	Diesel engines.
Juki Union Special	Wayne, NJ	02/05/97	NAFTA–1,492	Sewing equipment.
John H. Harland	Centralia, WA	02/06/97	NAFTA–1,493	Printing of personal checks.
Springfield Group	Eugene, OR	02/12/97	NAFTA–1,494	Green dried neneer.
Osh Kosh B'Gosh	Oshkosh, WI	02/17/97	NAFTA–1,495	Men's workwear clothing,
Square D Company	Clearwater, FL	02/17/97	NAFTA–1,496	Low voltage transformers.
Lorraine Linens	Hialeah Garden, FL	02/17/97	NAFTA–1,497	Linens.
Willamette Industries	Sweet Home, OR	02/13/97	NAFTA–1,498	Plywood.
Hafer Logging	LaGrands, OR	02/13/97	NAFTA–1,499	Log.
Binney and Smith	Winfield, KS	02/14/97	NAFTA–1,500	Crayon and markers.
Coltec	Roscoe, TX	02/07/97	NAFTA–1,501	Electronics.
Merchants Fast Motor Lines	Odessa, TX	02/18/97	NAFTA–1,502	Common carrier.
SCA Molnlycke	Palmer, Mk	02/18/97	NAFTA–1,503	Adult diapers and underpads.
Goodyear Tire and Rubber Company	Gadsden, AL	02/18/97	NAFTA–1,504	Tires.
Starter Sportswear	Century, FL	02/19/97	NAFTA–1,505	Outerwear and sweatsuit.
Kaufman Footwear	Batavia, NY	02/14/97	NAFTA–1,506	Leather boots.
Fibrex Company	North Aurora, IL	02/19/97	NAFTA–1,507	Pipes construction.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Belden Wire and Gable	Apple Creek, OH	02/21/97	NAFTA–1,508	Wire.
Allen—Bradle Co,	Mauston, WI	02/19/97	NAFTA–1,509	Printed electronic circuit boards.
Square D	Milwaukee, WI	02/19/97	NAFTA–1,510	Low voltage transformers and switchgear.
Sunbeam	McMinnville, TN	02/12/97	NAFTA–1,511	Human and animal hair clippers.
D and R Cedar Products	Forks, WA	02/19/97	NAFTA–1,512	Cedar, shakes, and shingles.
Posey	Hoquiam, WA	02/19/97	NAFTA–1,513	Piano sound boards.
Mitsubishi Consumer Electronics America	Santa Ana, CA	02/14/97	NAFTA–1,514	Projection televisions.
Standard Products Company	Schenectady, NY	02/20/97	NAFTA–1,515	Automotive body side molding.
Niagara Mohawk Power	West Syracuse, NY	02/20/97	NAFTA–1,516	Electricity.
Cabano Kingsway Transport	Buffalo, NY	02/21/97	NAFTA–1,517	Transportation.
Boise Cascade Corp.	Port, OR	02/24/97	NAFTA–1,518	Pulp and paper, timber.
Garland US Range	Freeland, PA	02/21/97	NAFTA–1,519	Parts and service for cooking equipment.
Hutchens Industrial	Mount Crovo, MO	02/19/97	NAFTA–1,520	Exercise equipment.
Merchants Fast Motor Lines	Abilene, TX	02/21/97	NAFTA–1,521	Transportation of freight.
Thompson Consumer Electronics	Syracuse, NY	02/25/97	NAFTA–1,522	Televisions.
Saul's Bros of Atlanta	Gillsville, GA	02/24/97	NAFTA–1,523	Ladies pants.
Schindler Elevator	Randolph, NJ	02/21/97	NAFTA–1,524	Elevator guide rails.
Burlington Industries	Greensboro, NC	02/26/97	NAFTA–1,525	Knit fabrics.
Kings Creek	Ferguson, NC	02/26/97	NAFTA–1,526	Ladies clothing.
Elk Spinners	Hope Mills, NC	02/26/97	NAFTA–1,527	Yarn.
American West Trading	Dresden, TN	02/26/97	NAFTA–1,528	Men's women's and children's boots.
Meyers and Son	Madison, IN	02/26/97	NAFTA–1,529	Men's coveralls.
Stride Rite	Hamilton, MO	02/27/97	NAFTA–1,530	Children's shoes.
Johnson Controls	Ann Arbor, MI	02/24/97	NAFTA–1,531	Seat tracks.
Tecumseh Metal	Grand Rapids, MI	02/24/97	NAFTA–1,532	Metal stampings.
D.D. Jones Warehouse and Transfer	Harrisburg, PA	02/28/97	NAFTA–1,533	Satellite rebuilding.
SPX Corporation	Dowagiac, MI	02/28/97	NAFTA–1,534	Roske booster housing.
Jefferson Smurfit	Monroe, MI	02/25/97	NAFTA–1,535	Industrial packaging.

[FR Doc. 97–6812 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–01448]

R & S Dress Mfg. Company Shippensburg, Pennsylvania; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 7, 1997, applicable to all workers of R & S Dress Mfg. Company located in Shippensburg, Pennsylvania. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly set the impact date at January 23, 1995. The Department is amending the certification for workers of the subject firm to set the impact date at January 23, 1996, one year prior to the date of the petition.

The amended notice applicable to NAFTA—01448 is hereby issued as follows:

All workers of R & S Dress Mfg. Company in Shippensburg, Pennsylvania, who became totally or partially separated from employment on or after January 23, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–6815 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–001391]

Van Leer Containers, Incorporated Chicago, Illinois; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 19, 1996 in response to a petition filed on behalf of workers at Van Leer Containers, Incorporated, located in Chicago, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 4th day of March 1997

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–6816 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Working Group Studying Employer Assets in ERISA Employer-Sponsored Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on April 9, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans' new Working Group set to study Employer Assets in ERISA Employer-Sponsored Plans.

The purpose of the open meeting, which will run from 9:30 a.m. to

approximately noon in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210, is for Working Group members to establish the agenda and course of study for the upcoming Council year on the topic of employer assets in ERISA employer-sponsored plans.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before April 1, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Employer Assets in ERISA Employer-Sponsored Plans should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 1, 1997, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 1.

Signed at Washington, D.C. this 12th day of March, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–6808 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Studying the Merits of Defined Contribution vs. Defined Benefit Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans' new Working Group being established to Study the Merits of Defined Contributions vs. Defined Benefit Plans With an Emphasis on Small Business Concerns will hold a public meeting on April 8, 1997 in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to begin organizing the course of study for the year and, it is hoped, even to begin taking testimony on the topic.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before April 1, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Studying the Merits of Defined Contribution vs. Defined Contribution Plans With an Emphasis on Small Business Concerns should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 1.

Signed at Washington, D.C. this 12th day of March, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–6809 Filed 3–17–97; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Historical Publications and Records Commission; National Historical Publications and Records Commission Strategic Plan; Request for Comments

AGENCY: National Historical Publications and Records Commission, National Archives and Records Administration.

ACTION: Request for comment.

SUMMARY: The National Historical Publications and Records Commission (NHPRC), a grant-making affiliate of the National Archives and Records Administration, asks the various constituencies it serves to address a series of questions on the present and future status of the NHPRC's role. The context for this invitation is the NHPRC's decision to review the strategic plan voted upon in November 1996.

DATES: Comments should be received by May 1, 1997, to ensure consideration by the Commission.

ADDRESSES: Requests for packets of background information described in the Supplementary Information section of this notice may be obtained by calling NHPRC at (202) 501–5600 or by writing to NHPRC, 700 Pennsylvania Avenue, Room 607, Washington, DC 20408. Comments may be sent to the same address, or by fax to (202) 501–5601, or by e-mail to nhprc@arch1.nara.gov.

FOR FURTHER INFORMATION CONTACT: Gerald George, Executive Director, NHPRC, at 202–501–5600.

SUPPLEMENTARY INFORMATION:

In thinking about the past, present, and future of the NHPRC, we ask you to speak to the following issues:

(a) How should the legislative history of the NHPRC affect decisions on how the Commission allocates its resources?

(b) How effectively have past NHPRC allocations met the statutory objectives of the Commission?

(c) What public benefits should the Commission seek to achieve in the context of entering a new century, with changing circumstances in technology, user expectations, and scholarly communication?

(d) What is an appropriate way for the NHPRC to determine, in principle, how its funds should be allocated?

(e) What are the implications of the new strategic plan for the NHPRC's ability to achieve its statutory objectives?

The NHPRC requests responses to these questions by May 1, 1997, so that members of the Commission may review the responses prior to the next NHPRC meeting in June 1997. Organizations interested in responding are asked to request from the NHPRC a packet of background information consisting of five items: (1) A copy of the strategic plan voted upon in November 1996; (2) a chart comparing past authorizations and appropriations of NHPRC grant funds; (3) a chart showing past allocations of NHPRC grant funds in dollars and in percentages; (4) copies of all NHPRC statutes containing Congressional mandates; and (5) the most recent House and Senate reports on NHPRC reauthorization legislation.

Dated: March 12, 1997.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 97–6720 Filed 3–17–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date & Time: April 2, 1997, 10:15 am–5 pm; April 3, 1997, 8 am–5 pm

Place: Arlington Hilton Hotel, 950 N. Stafford Street, Arlington, VA 22203.

Type of meeting: Open.

Contact Persons: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, Room 835, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1670.

Summary Minutes: May be obtained from contact listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1997 Programs and Initiative Strategic Planning for FY 1998 and Beyond.

Dated: March 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–6801 Filed 3–17–97; 8:45 am]

BILLING CODE 7555–01–M

Real and Harmonic Analysis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Real and Harmonic Analysis in Math Sciences (1204).

Date and Time: April 7–9, 1997; 8:30 a.m. until 5 p.m.

Place: Room 1060, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Juan Manfredi, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Analysis Program nominations/applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–6800 Filed 3–17–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate 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 Undergraduate Education (1214).

Date and Time: April 6th, 1997 (7:30 p.m. to 9 p.m.), April 7th, 1997 (8 a.m. to 5 p.m.) and April 8th, 1997 (8 a.m. to 12 Noon).

Place: Room 310 & 320, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Terry Woodin, Program Director, Division of Undergraduate Education (DUE), Room 835, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning continued funding of current projects in their third year.

Agenda: A reverse site panel meeting to review and evaluate third year projects in the NSF Collaborative for Excellence in Teacher Preparation.

Reason for Closing: The proposals being reviewed includes 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 within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: March 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–6799 Filed 3–17–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 9:30 a.m., Tuesday, March 25, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE DISCUSSED:

6674A Railroad Accident Report: Near Head-On Collision and Derailment of Two New Jersey Transit Commuter Trains in Secaucus, New Jersey, February 9, 1996.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: March 14, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–6905 Filed 3–14–97; 2:26 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

In the Matter of Entergy Operations, Inc. (Arkansas Nuclear One, Unit 1); Exemption

I

Entergy Operations, Inc. (the licensee) is the holder of Facility Operating License No. DPR–51, which authorizes operation of Arkansas Nuclear One, Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors, Arkansas Nuclear One, Units 1 and 2, located at the licensee's site in Pope County, Arkansas.

II

In its letter dated November 26, 1996, the licensee requested an exemption from the Commission's regulations for Arkansas Nuclear One, Unit 1. Title 10 of the Code of Federal Regulations, Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for

the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

The licensee relies on the electromatic relief valve (ERV) to provide low temperature overpressure protection (LTOP). The ERV is mounted on the pressurizer and helps to control pressure transients during power operations. However, when the reactor is heating up or cooling down and the primary system pressure and temperature are reduced, the ERV is reset to the LTOP mode. In the LTOP mode the setpoint to open the ERV is low enough to prevent pressure transients from exceeding applicable P/T limits. Some margin should be maintained between the primary system pressure and the LTOP setpoint to prevent the ERV from lifting as a result of normal operating pressure surges.

The licensee has requested the use of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, ''Low Temperature Overpressure Protection,'' which allows exceeding the Appendix G safety limits by 10 percent. ASME Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514 has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *''

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the ANO–1 reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the ERV would be reduced, thereby improving plant safety.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 11482).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–6756 Filed 3–17–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–388]

Susquehanna Steam Electric Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–22, issued to Pennsylvania Power & Light Company (the licensee), for operation of the

Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, PA.

The proposed amendment would make the following changes to the Technical Specifications for the plant to reflect the initiation of a 24-month fuel

cycle and the use of the Atrium-10 fuel design: (1) Inclusion of core flow dependent minimum critical power ratio (MCPR) Safety Limits in Sections 2.1.2 and 3.4.1.1.2, (2) inclusion of Siemens Power Corporation (SPC methodology topical reports in Section 6.9.3.2, changes to Section 5.3.1 to reflect new fuel design features, and (3) changes to definitions in Section 1 to reflect the new fuel design.

A notice of consideration of issuance of amendment with a proposed no significant hazards consideration determination was published in the Federal Register on January 15, 1997 (62 FR 2193). This notice supersedes the January 15, 1997, notice.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 17, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–2: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 18, 1996, as supplemented March 12, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 12th day of March 1997.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–6757 Filed 3–17–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATE: Weeks of March 17, 24, 31, and April 7, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 17

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)

Week of April 7—Tentative

Wednesday, April 9

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

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, DC 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 14, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–6938 Filed 3–14–97; 2:26 pm]

BILLING CODE 7590–01–M

[Docket 70–3091]

Notice of Availability of Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy Concerning the Cooperation and Support for Demonstration Phase (Phase I) of DOE Hanford Tank Waste Remediation System Privatization Activities

SUMMARY: On January 29, 1997, the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) signed a Memorandum of Understanding (MOU) to provide a basis for cooperation and support during the demonstration phase (Phase I) of the DOE Hanford Tank Waste Remediation System (TWRS) Privatization Activities. The MOU establishes a cooperative process to support DOE in developing a regulatory program consistent with the NRC's regulatory approach.

FOR FURTHER INFORMATION CONTACT: Amy L. Bryce, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–5848.

SUPPLEMENTARY INFORMATION:

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy

Cooperation and Support for Demonstration Phase (Phase I) of DOE Hanford Tank Waste Remediation System Privatization Activities

I. Purpose

The purpose of this Memorandum of Understanding (MOU) between the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) is to establish the basis for cooperation and mutual support during the demonstration phase (defined as Phase I) of DOE's Tank Waste Remediation System (TWRS) Privatization activities. An objective of this DOE/NRC interaction is the development and execution of a comprehensive regulatory program by DOE that is consistent with NRC's regulatory approach for protecting workers, the general public, and the environment. DOE's regulatory program is to be structured to facilitate the possible transition of regulatory responsibilities from DOE to NRC at the start of the full-scale operations phase (defined as Phase II). During Phase I, DOE is responsible for implementing the TWRS Privatization regulatory program. This MOU provides for cooperation and mutual support in an integrated effort that provides for:

1. DOE to acquire capability to implement a program of nuclear safety and safeguards regulation consistent with NRC's regulatory approach.
2. NRC to acquire sufficient knowledge and understanding of the physical and operational situation at the Hanford waste tanks and the processes, technology and hazards involved in Phase I activities, to enable NRC (a) to assist DOE in performing reviews in a manner consistent with NRC's regulatory approach and (b) to be prepared to develop an effective and efficient regulatory program for the licensing of DOE contractor-owned and contractor-operated facilities that will process waste at Hanford during Phase II.

II. Introduction

A. Background

During 1991, the Department of Energy (DOE) established the TWRS Program at the Hanford Site to manage, retrieve, treat, immobilize, and dispose of certain radioactive waste in a safe, environmentally-sound, and cost-effective manner. The requirements and commitments for the TWRS cleanup activities are documented in the Hanford Federal Facilities Agreement and Consent Order, also known as the Tri-Party Agreement (TPA). Under the TPA, DOE, the U.S. Environmental Protection Agency (EPA), and the Washington State Department of Ecology have agreed to a timetable for cleanup of the Hanford Site.

DOE, through the TWRS Program, is making a fundamental change in its contracting approach at Hanford, utilizing privately-owned facilities on the Hanford Site for processing waste which contains special nuclear material. This change in contracting approach also necessitates a fundamental change in DOE's approach to regulation and oversight.

To accomplish the TWRS requirements, DOE plans to privatize treatment operations for the Hanford tank wastes. The TWRS Privatization is divided into two phases, a demonstration phase (defined as Phase I) and a full-scale operations phase (defined as Phase II). During both phases, DOE will purchase waste treatment services from a DOE contractor-owned, contractor-operated facility under a fixed-price type of contract; DOE will provide the feedstock to be processed. The DOE TWRS Privatization Contractor must finance the project; design the equipment and facility; apply for and receive required permits and licenses; construct the facility and bring it on line; operate the

facility to treat waste; and deactivate the facility.

DOE will undertake nuclear safety and safeguards regulatory responsibility associated with the TWRS Privatization activities during Phase I. The EPA and the State of Washington have responsibility to regulate environmental issues and the Occupational Safety and Health Administration has responsibility to regulate occupational safety. NRC's participation during Phase I will primarily be of a cooperative nature for the purposes of information transfer and assisting DOE in the establishment of a regulatory program that is consistent with NRC's regulatory approach for protecting workers, the general public, and the environment.

This MOU describes the relationship between NRC and DOE for activities conducted during Phase I only. The relationship between NRC, DOE, and the DOE TWRS Privatization Contractors during Phase II remains to be clarified by legislation and/or regulatory requirements.

B. Phase Descriptions

Phase I

Phase I is a proof-of-concept/commercial demonstration-scale effort. The objectives of Phase I are to: (a) demonstrate the technical and business viability of using privatized facilities to treat Hanford tank waste;(b) define and maintain required levels of safety and safeguards; (c) maintain environmental protection and compliance; and (d) substantially reduce life-cycle costs and time required to treat Hanford tank waste.

Phase II

Phase II will be the full-scale production phase, in which the facilities are to be configured so that all the remaining tank waste can be processed. The objectives of Phase II are to (a) implement the lessons learned from Phase I, and (b) process all tank waste into forms suitable for final disposal. The current DOE proposal is to have NRC assume full regulatory responsibility (consistent with the manner in which NRC regulates its licensees) for Phase II, although certain operational, statutory, and regulatory issues must be clarified before the proposed Phase II regulation by NRC can be implemented. Current estimates are that DOE procurement documents and NRC regulatory requirements for Phase II would be needed by the year 2004.

This MOU does not apply to Phase II activities.

III. Authority

A. Department of Energy

Sections 31, 91 and 161 of the Atomic Energy Act of 1954, as amended; Section 104 of the Energy Reorganization Act of 1974; and, Section 301 of the DOE Organization Act authorize DOE to provide for the safe storage, processing, transportation and disposal of hazardous waste, including radioactive waste, resulting from nuclear materials production and weapons production. In addition, with regard to activities under DOE's jurisdiction, Section 161.i.(3) of the Atomic Energy Act of 1954, as amended, permits DOE to prescribe such regulations or orders as it may deem necessary to govern DOE activities authorized by the Atomic Energy Act of 1954, as amended, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property.

B. Nuclear Regulatory Commission

Sections 53, 57, 62, 63, 81, 103, 104, and 161b, of the Atomic Energy Act of 1954, as amended, and Section 201(f) of the Energy Reorganization Act of 1974 authorize NRC to license and establish by rule, regulation, or order, standards and instructions to govern the possession and use of special nuclear material, source material, or byproduct material to protect health or to minimize danger to life or property, or to promote the common defense and security. This agreement is entered into pursuant to these and other applicable authorities, including the Economy Act of 1932, as amended.

IV. Foundation Understandings

1. This MOU applies to Phase I only.

2. DOE will regulate the DOE TWRS Privatization Contractors during Phase I under the terms and conditions agreed upon by DOE and the DOE TWRS Privatization Contractors, and will be responsible for the regulatory oversight of all design, construction, operational, and event-response activities. NRC will have no regulatory authority over the DOE TWRS Privatization Contractors during Phase I.

3. No regulatory action, process, or practice established by DOE during Phase I will be binding on NRC during any possible NRC regulatory oversight of DOE TWRS Privatization Contractors during Phase II.

4. NRC's regulatory approach is based (a) on reviewing the applicant's systematic and integrated identification of potential accidents and interactions resulting from radiological and related process chemical and fire hazards, and (b) on ensuring adequate protection against those hazards which could impact on the safety of the worker, the general public and the protection of the environment.

V. Agreements Between Parties

A. Responsibilities

Department of Energy

The Manager, Richland Operations Office, will be responsible for implementing the terms of this agreement. The TWRS Regulatory Official, who reports to the Manager, Richland Operations Office, will be the DOE point of contact for all communications relating to carrying out the provisions of this agreement.

Nuclear Regulatory Commission

The Director of Nuclear Materials Safety and Safeguards (NMSS) will be responsible for implementing the terms of this agreement. The Chief of the responsible Branch within NMSS will be the NRC point of contact for all communications related to carrying out the provisions of this agreement.

B. General Provisions

1. At the foundation of the DOE privatization approach is a predictability and reliability feature embedded in DOE's contracts with the TWRS Privatization Contractors '' namely contractual commitments for DOE regulatory actions within specific time periods. Essential to timely and orderly DOE regulatory actions is the awareness by NRC of these contractual commitments and the need for timely interaction between DOE and NRC at all levels.

2. If an issue arises in the implementation of this MOU which cannot be resolved at the agency point-of-contact level, the NRC and DOE agree to refer the matter within 30 days to the Director, NMSS, and the Manager, Richland Operations Office, for appropriate action.

3. It is the intent of both parties to conduct the TWRS Regulatory Program in an open, public, and professional manner. NRC and DOE recognize the importance of providing timely and accurate information to the public regarding regulatory matters that may affect the protection of workers, the general public, and the environment. Meetings between NRC and DOE staff in connection with this MOU will be governed by NRC policy on open meetings (59 FR48340; September 20, 1994). NRC will participate with DOE in public meetings and other public

interactions, as appropriate. All transmittals between DOE and NRC regarding TWRS Privatization activities will be made publicly available, consistent with NRC and DOE policies and requirements, at an established local public document room.

4. Each agency recognizes that it is responsible for the protection, control, and accounting of classified, proprietary, and procurement-sensitive information; Safeguards Information (SGI); and Unclassified Controlled Nuclear Information (UCNI).

5. Each agency will be responsible for processing, under its established program(s), allegations—declarations or statements or assertions of impropriety or inadequacy whose validity has not been established— associated with the regulated TWRS Privatization activities covered by this Memorandum of Understanding. Each agency will keep the other agency informed, as appropriate, of such allegations, the allegations'' status, and the allegations'' resolution. Each agency will assure that allegations are promptly referred to the agency or entity that has jurisdiction over the allegation.

6. In support of the DOE TWRS Privatization activities, DOE will provide private office space and equipment, if needed, for NRC in the vicinity of the TWRS Regulatory Unit in the Richland, Washington area. DOE will provide the NRC with ready access to current TWRS regulatory information; access to key individuals in the Regulatory Unit for consistency discussions; access to TWRS general information, tank farm status and operational issues, and safety perspectives; and access to Hanford Site safety perspectives.

C. Regulatory Interaction Activities

1. Site Familiarization

NRC will need to acquire knowledge of the physical and operational situation for the Hanford waste tanks and of the processes, technologies, and hazards involved in processing the tank wastes. The following activities will be performed to provide this familiarization: a. NRC will visit the Hanford Site, as necessary, to examine the conditions of the tank farms as they may relate to TWRS Privatization. As part of NRC's orientation, DOE will provide NRC information on:

- The physical conditions and operational requirements necessary for safe storage, retrieval, transfer, and processing of the tank waste,
- Evaluations of the criticality potential for TWRS Privatization activities,
- Radiation levels of the waste and chemical forms of the waste,
- Contamination levels in the areas of the planned TWRS Privatization facilities and tanks,
- Hydrogen generation/flammable gas situation of tanks,
- Organic complexant/nitrate oxidizer situation of tanks,
- Other possible hazards associated with the waste,
- Available or planned waste movement systems, and
- The Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and Atomic Energy Act of 1954 for the TWRS.

b. DOE will provide NRC access to the tank farms, tank farm records and documentation, and other information concerning operational conditions and events that NRC may desire in order to understand the TWRS Privatization project and associated hazards, processes, and conditions.

c. Upon request by NRC, DOE will brief or hold discussions with NRC on issues related to the TWRS Privatization effort. The locations, timing, and content of these meetings will be agreed upon by the points of contact for each agency.

d. NRC may occasionally conduct reviews and special audits or inspections at DOE's request to provide objective perspective on selected regulatory issues.

2. Regulatory Familiarization

To assist the DOE in establishing the capability to regulate consistent with NRC concepts and principles, the NRC will provide detailed briefings, guidance documents, and support in developing important administrative and technical program elements of a regulatory program. NRC will provide DOE access to regulatory training provided by NRC to its staff on a space available basis and, with specific agreement, will provide DOE opportunity to observe NRC's regulatory activities.

3. Development of DOE TWRS Regulatory Program

DOE guidance specific to the regulation of DOE TWRS Privatization Contractors will be prepared and issued by DOE. The guidance is for use by the DOE's TWRS Regulatory Unit in its execution of the regulatory reviews and resulting regulatory actions and is provided as information to the DOE TWRS Privatization Contractors for their preparation of regulatory submittals. The guidance will cover those submittals required of the Contractors by DOE such as the Quality Assurance (QA) program, essential set of safety standards and requirements (including the site-specific design basis), integrated safety management plan, safety assessment, construction authorization request, operating authorization request, operational reports and assessments, and deactivation authorization. DOE will be responsible for issuing this guidance in its final form.

The following activities will be performed by NRC and DOE to develop the guidance:

a. NRC will provide DOE with established and evolving NRC guidance and position documents as input for DOE to consider in the development and updating of its guidance for the DOE regulatory review. NRC will assist DOE in developing a DOE inspection program that will be applied during design, fabrication, construction (e.g. acceptable codes and standards for concrete, electrical, welding, etc.), installation, and qualification testing.

b. DOE will develop guidance for the review of Contractor submittals and DOE reviews of TWRS Privatization activities. NRC will review and provide a basis for its comments on DOE's draft guidance to identify areas that may not be consistent with NRC's regulatory approach.

c. NRC will participate, as appropriate, with DOE in the joint development of guidance, based on industry standards, e.g., ANS/ANSI, for issuance by DOE as guidance for the DOE TWRS Privatization Program.

4. Regulatory Program Implementation

Specific DOE regulatory activities are planned: these include design basis review, QA program evaluation, standards approval, initial safety evaluation, construction authorization and inspection, operating authorization oversight, and deactivation authorization. These actions will begin in FY 1997 and continue throughout Phase I. The following activities will be performed by DOE and NRC in fulfillment of their respective responsibilities under this MOU:

a. DOE will be responsible for safety (e.g. design basis) and safeguards reviews and determining acceptability of DOE TWRS Privatization Contractors' submittals against the DOE TWRS guidance. DOE will have final decision authority for regulatory implementation during Phase I and for all interactions with the DOE TWRS Privatization Contractors.

b. NRC will review and provide a basis for its comments on DOE TWRS Privatization Contractors' submittals to identify any areas that are not consistent

with NRC's regulatory approach. These submittals will include all documents which address the technical and quality basis for the TWRS facilities and which could affect nuclear and process safety and safeguards in design, construction and operation.

NRC will assist DOE in evaluating submittals and in verifying effective implementation of:

- Design—design basis, design verification, level of design detail and documentation, design specifications, calculations and drawings, and procurement specifications,
- Quality assurance—for design, procurement, construction, pre-operational testing and operation,
- Operator training and qualification,
- Human factors,
- Emergency response.

VI. Other Provisions

1. Nothing in this MOU will limit the authority of either agency to independently exercise its authority with regard to matters that are the subject of this MOU.

2. Nothing in this MOU will be deemed to establish any right nor provide a basis for any action, either legal or equitable, by any person or class of persons challenging a government action or a failure to act.

3. This MOU will be effective upon signature and upon satisfaction of conditions in Section VI.4 and will remain in effect until the end of Phase I. This agreement may also be terminated by mutual agreement or by written notice of either party submitted six months in advance of termination. Amendments or modifications to this agreement may be made upon written agreement of the parties.

4. This MOU will become effective, and remain in effect during such time periods when Congress authorizes, and provides appropriate funding (or when there is another acceptable form of reimbursement) for NRC's participation in this project.

5. Activities within the scope of this MOU and within the scope of appropriated resources are mutually agreed to be without reimbursement of cost for either organization. Special activities such as described in Sections V.C.1.d and V.C.2 may be negotiated for cost reimbursement as needed.

John Wagoner, Manager, Richland Operations Office, Department of Energy

Carl Paperiello, Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission

This Memorandum of Understanding was signed by the Manager of the Department of Energy's Richland Operations Office on January 15, 1997 and the Director of the Office of Nuclear Materials Safety and Safeguards, U. S. Nuclear Rgulatory Commission on January 29, 1997.

Dated at Rockvile, Maryland, this 7th day of March 1997.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 97–6759 Filed 3–17–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1997.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 1997, of nine rescission proposals and seven deferrals contained in two special messages for FY 1997. These messages were transmitted to Congress on December 4, 1996, and on February 10, 1997.

Rescissions (Attachments A and C)

As of March 1, 1997, nine rescission proposals totaling $397 million had been transmitted to the Congress. Attachment C shows the status of the FY 1997 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1997, $3,420 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1997.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report is printed in the editions of the Federal Register cited below:

61 FR 66172, Monday, December 16, 1996

62 FR 8045, Friday, February 21, 1997

Franklin D. Raines,

Director.

ATTACHMENT A.—STATUS OF FY 1997 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	$397.1
Rejected by the Congress	
Amounts rescinded	
Currently before the Congress	397.1

ATTACHMENT B.—STATUS OF FY 1997 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	$3,544.3
Routine Executive releases through March 1, 1997 (OMB/Agency releases of $124.3 million.)	−124.3
Overturned by the Congress	
Currently before the Congress	3,420.0

ATTACHMENT C.—STATUS OF FY 1997 RESCISSION PROPOSALS—AS OF MARCH 1, 1997

[Amounts in thousands of dollars]

Agency/Bureau/Account	Rescission number	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service:								

ATTACHMENT C.—STATUS OF FY 1997 RESCISSION PROPOSALS—AS OF MARCH 1, 1997—Continued

[Amounts in thousands of dollars]

Agency/Bureau/Account	Rescission number	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
P.L. 480 grants—Title I (OFD), II, and III	R97–1	3,500	.....	2–10–97				
P.L. 480 program account	R97–2	46,500	.....	2–10–97				
DEPARTMENT OF DEFENSE—MILITARY								
Operation and Maintenance:								
Operation and maintenance, Defense-wide.	R97–4	10,000	.....	2–10–97				
Procurement:								
National Guard and Reserve equipment	R97–5	62,000	.....	2–10–97				
DEPARTMENT OF ENERGY								
Energy Programs:								
Strategic petroleum reserve	R97–6	11,000	.....	2–10–97				
Power Marketing Administrations:								
Construction, rehabilitation, operation and maintenance, Western Area Power Administration.	R97–7	2,111	.....	2–10–97				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs:								
Annual contributions for assisted housing	R97–8	[1] 250,000	.....	2–10–97				
DEPARTMENT OF JUSTICE								
General Administration:								
Working capital fund	R97–9	6,400	.....	2–10–97				
GENERAL SERVICES ADMINISTRATION								
General Activities:								
Expenses, Presidential transition	R97–10	5,600	.....	2–10–97	.....	.....		
Total Rescissions		397,111	0	.....	0	0		

[1] Funds never withheld from obligation.

ATTACHMENT D.—STATUS OF FY 1997 DEFERRALS—AS OF MARCH 1, 1997

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 3–1–97
		Original request	Subsequent change (+)		Cumulative OMB agency	Congressionally required			
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance:									
Economic support fund and International Fund for Ireland.	D97–1	1,258,292	.....	12–4–96	200	.....	.....	.....	1,258,092
Foreign military financing program ..	D97–2	1,412,375	.....	12–4–96	.....	.....	.....	.....	1,412,375
Foreign military financing loan program.	D97–3	60,000	.....	12–4–96	.....	.....	.....	.....	60,000
Foreign military financing direct loan financing account.	D97–4	540,000	.....	12–4–96	.....	.....	.....	.....	540,000
Agency for International Development:									
International disaster assistance, Executive.	D97–5	147,800	.....	12–4–96	71,090	.....	.....	.....	76,710
DEPARTMENT OF STATE									
Other:									
United States emergency refugee and migration assistance fund.	D97–6	118,486	.....	12–4–96	53,000	.....	.....	.....	65,486

ATTACHMENT D.—STATUS OF FY 1997 DEFERRALS—AS OF MARCH 1, 1997—Continued

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 3–1–97
		Original request	Subsequent change (+)		Cumulative OMB agency	Congressionally required			
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses.	D97–7	7,365	.....	12–4–96	.....	.....	.....	.....	.....
	D97–7A	.....	4	2–10–97	.....	.....	.....	.....	7,369
Total, deferrals		3,544,318	4	.....	124,290	.....	.....	0	3,420,032

[FR Doc. 97–6704 Filed 3–17–97; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Medeva PLC, American Depositary Shares, Each One Representing Four Ordinary Shares, Par Value 10 Pence Sterling Per Share) File No. 1–10817

March 12, 1997.

Medeva PLC (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting fourth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Company has listed for trading the Security on the New York Stock Exchange, Inc. (''NYSE'') effective March 4, 1997. Trading in the Security on the NYSE commenced at the opening of business on March 5, 1997. In making the decision to withdraw the Security from listing on the Amex, the Company considered that the direct and indirect costs and expenses and the division of the market do not justify maintaining the dual listing of the Security on the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Security from listing on the Exchange.

Any interested person may, on or before April 2, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–6713 Filed 3–17–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38380; File No. SR–NASD–97–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to the Release of Disciplinary Information

March 10, 1997.

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 February 11, 1997, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change and on March 10, 1997, proposed 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 NASD Regulation. 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

NASD Regulation is proposing to amend the Interpretation on the Release of Disciplinary Information in IM–8310–2 of the Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''). Below is the text of the proposed rule change. Proposed new text is in italics; deleted text is in brackets.

IM–8310–2 Release of Disciplinary Information [1]

(a) The Association shall, in response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, release certain information [as] contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, [or] state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be

[1] The underlined language in paragraph (a) treats as if adopted the language changes already proposed in file SR–NASD–96–38. File SR–NASD–96–38 has been published for comment in Securities Exchange Act Release No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996).

reported on Form BD or U–4 and all foreign government or self-regulatory organization disciplinary actions that [are] *relate to* securities or commodities [related] *transactions* and are required to be reported on Form BD or U–4 and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association will also release information required to be reported on Form BD or Form U–4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten (10) years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.

(b) The Association shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Association or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by [a] *the following* statement [that]*: ''T*he issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. *Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.''*

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the [Code of Procedure] *Rule 9000 Series* for appeal or call for review within the Association or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Association;

(3) a final decision of the Association that is released prior to the time period provided under the [Securities Exchange] Act [of 1934] for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of the Association are subject to review and modification by the Commission; and

(4) a final decision of the Association that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

(c) *(1) The Association shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement of NASD Regulation, Inc., the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rulemaking Board, as determined by the NASD Regulation, Inc. Board of Directors (a ''Designated Rule''); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest.*

(2) Information released to the public pursuant to subparagraph (c)(1) shall be accompanied by the statement required under subparagraph (b)(1).

[(c)]*(d) (1)* The Association shall [report to the membership and to the press pursuant to the procedures and at the times outlined herein any order of] *release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a* suspension, cancellation or expulsion of a member: or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member; *or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest.* The [Board of Governors] *National Business Conduct Committee (NBCC)* may, in its discretion, determine to waive the [notice provisions set forth herein as to an order of imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member,] *requirement to release information with respect to a disciplinary decision* under those extraordinary circumstances where [notice] *the release of such information* would violate fundamental notions of fairness or work an injustice.

(2) Information released to the public pursuant to subparagraph (d)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs (b)(2)–(4).

[(d)] *(e)* If a decision [of a District Business Conduct Committee] *issued pursuant to the Rule 9000 Series other than by the NBCC* is not appealed to or called for review by the NBCC, the [order of the District Business Conduct Committee] *decision* shall become effective on a date set by the Association but not before the expiration of 45 days after the date of decision. [Notices of decisions imposing monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 45 days from the date of the said decision.]

[(e)] *(f)* Notwithstanding paragraph [(d)] *(e),* expulsions and bars imposed pursuant to the provisions of Rules 9217 and 9226 shall become effective upon approval or acceptance by the [National Business Conduct Committee] *NBCC,* and [publicity] *information* regarding any sanctions imposed pursuant to those Rules may be [issued] *released to the public pursuant to paragraph (d)* immediately upon such approval or acceptance.

[(f)]*(g)* If a decision [of a District Business Conduct Committee] *issued pursuant to the Rule 9000 Series* is appealed to or called for review by the *NASD Regulation, Inc.* Board of [Governors] *Directors or called for review by the NASD Board of Governors,* [the order of the District Business Conduct Committee is] *the decision shall be* stayed pending a final determination and decision by the Board [and notice of the action of the District Business Conduct Committee shall not be sent to the membership or the press during the pendency of proceedings before the Board of Governors].

[(g)]*(h)* If a final decision of the Association is not appealed to the Commission, the sanctions specified in the decision (other than bars and expulsions) shall become effective on a

date established by the Association but not before the expiration of 30 days after the date of the decision. Bars and expulsions, however, shall become effective upon issuance of the decision, unless the decision specifies otherwise. [Notices of decisions imposing monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press concurrently; provided, however, that any notice shall be sent prior to the expiration of 30 days from the date of a decision imposing sanctions other than expulsion, revocation, and/or the barring of a person from being associated with all members].

[(h)]*(i)* If a decision of the [Board of Governors] *Association* imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Association of notice from the Commission of such appeal and the Association's notice shall state whether the effectiveness of the Board's decision has [or has not] been stayed pending the outcome of proceedings before the Commission.

[(i)]*(j)* In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of the [Board of Governor] *Association*, involving the imposition of monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by the Association of a formal notice of appeal. Such notice shall include a statement [that] *whether* the order of the Commission has [or has not] been stayed.

[(j)]*(k)* Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from the Association; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of $10,000 or more shall be [made known to the membership of the Association] *released to the public* through a notice containing the effective date thereof sent as soon as possible after receipt by the Association of the order of the Commission.

[(k)]*(l)* Cancellation of membership or registration pursuant to the Association's By-Laws, Rules and Interpretative Material shall be [sent to the membership and, when appropriate, to the press] *released to the public* as soon after the effective date of the cancellation as possible.

[(l)]*(m)* [Notices to the membership and r] *R*eleases to the [press] *public* referred to *in paragraphs (c) and (d)* above shall identify the Rules and By-Laws of the Association or the SEC Rules violated, and shall describe the conduct constituting such violation. [Notices] *Releases* may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by the Association to be in the public interest.

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 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. 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

1. Purpose

The NASD's Public Disclosure Program (''Program'') currently provides through the Central Registration Depository (''CRD'') a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on disciplinary complaints [2] when they are issued by the Association and disciplinary decisions when they are issued by any Committee or Board of the Association. Recently, the SEC approved an amendment that also requires the Association to provide copies of disciplinary complaints and decisions upon request.[3]

The Interpretation on the Release of Disciplinary Information (''Interpretation''), contained in IM–8310–2,[4] currently permits the Association to issue information regarding certain specified significant disciplinary decisions when they become final.[5] The specified decisions are those that impose sanctions of a suspension, bar or fine of $10,000 or more.

As the Program has expanded to provide through CRD a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on the filing of disciplinary complaints, concerns have arisen that there is a disparity of access to information. Those individuals that are not familiar with the Program are not apprised by NASD publication to the membership and the press of the issuance of a significant complaint regarding a member or associated person with whom the individual., does business. Moreover, although individuals that are aware of the Program can obtain information on any NASD disciplinary decision from CRD, the current provisions of IM–8310–2 do not permit the Association to be proactive in providing notification to the membership and the press of non-final disciplinary decisions and does not permit the Association to also publicize other (final and non-final) disciplinary decisions that do not meet the current publication criteria but nonetheless involve a significant policy or enforcement issue that should be brought to the attention of the public.

In considering this issue, NASD Regulation believes that the interests of the public in obtaining improved access to information concerning significant disciplinary matters must be balanced against the legitimate interests of respondents not to be subject to unfair publicity concerning unadjudicated allegations of violations (*i.e.*, complaints) and non-final determinations of violations (*i.e.*, non-final decisions). The proposed rule change seeks to balance these interests by providing for publicity at the

[2] This rule filing relates to ''disciplinary complaints,'' and does not address ''customer complaints.''

[3] *See*, Securities Exchange Act Release No. 37797 (October 9, 1996); 61 FR 53984 (October 16, 1996).

[4] The Interpretation was previously cited as ''Resolution of the Board of Governors—Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons'' and appeared after paragraph 2301 of the NASD Manual, following Article V, Section 1 of the Rules of Fair Practice.

[5] The publication of information is normally done through a monthly press release containing information about significant disciplinary actions that have become final during the preceding month. In addition, a more detailed press release may be issued on a more expedited basis about a case of particular importance.

Association's initiative of those disciplinary matters that could most significantly affect investor interests and by enhancing the disclosure accompanying the release of disciplinary complaints. NASD Regulation is, therefore, proposing to amend IM–8310–2 to authorize the Association to release information on those disciplinary complaints that: (1) contain an allegation of violation of significant designated SEC, NASD, or Municipal Securities Rulemaking Board (''MSRB'')[6] rules; or (2) the President of NASD Regulation determines should be publicized in the public interest. In addition, the Association would be authorized to release information on final and non-final disciplinary matters that: (1) meet the current criteria for significant disciplinary decisions; (2) meet the specific criteria proposed for disciplinary complaints, or (3) the President of NASD Regulation determines should be publicized in the public interest.

Notice of Disciplinary Complaints

NASD Regulation is proposing to amend IM–8310–2 to authorize the Association to release information on those disciplinary complaints that present the most *significant* investor protection issues, *i.e.*, violations of anti-fraud, anti-manipulation, and sales practices rules that impact investors. New paragraph (c) to IM–8310–2 would authorize the Association to release to the public information on NASD-initiated[7] disciplinary complaints that contain an allegation of a violation of a specifically identified statute, rule or regulation of the SEC, NASD, or MSRB that is determined by the NASD Regulation Board of Directors to involve serious misconduct that affects investors (''Designated Rules''). NASD Regulation is proposing to adopt a list of Designated Rules that includes only those SEC, NASD, and MSRB rules that prohibit significant fraudulent activity or egregious conduct. Following is the list of Designated Rules that relate to complaints as to which information would be automatically released:

LIST OF DESIGNATED RULES

Sec Rules

Rule 10b–5	Employment of Manipulative and Deceptive Devices.
Rules 15g–1 to 15g–9	Sales Practice Requirements for Certain Low-Priced Securities (Penny Stock Rules).
Section 17(a)	Fraudulent Interstate Transactions.

NASD Rules

Rule No.	Title
2110	Standards of Commercial Honor and Principles of Trade. (Only if the complaint alleges unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports, excessive mark-ups).
2120	Use of Manipulative, Deceptive, or Other Fraudulent Devices.
2310	Recommendations to Customers (Suitability).
2330	Customers' Securities or Funds.
2440	Fair Prices and Commissions.
3310	Publication of Transactions and Quotations.
3330	Payment Designed to Influence Market Prices, Other than Paid Advertising.

MSRB Rules

Rule	Title
Rule G–19	Suitability of Recommendations and Transactions.
Rule G–30	Prices and Commissions (Mark-ups).
Rules G–37 (b) & (c)	Political Contributions and Prohibitions on Municipal Securities Business.

This list of Designated Rules would be included in the Notice to Members announcing SEC approval of this proposed rule change. In the future, any changes to the list will be published by the Association in a Notice to Members, after approval by the Board.

For the same reasons that support the release of information concerning complaints, NASD Regulation also believes that the Association should have authority to release information on disciplinary complaints that contain allegations of violations of other rules and regulations not included on the list of Designated Rules but that nonetheless involved serious misconduct that could affect investors. It is, therefore, also proposed that new subparagraph (c)(1) to IM–8310–2 include a provision that would grant authority to the President of NASD Regulation to issue information on ''any complaint or group of complaints'' that involve a significant policy or enforcement determination where the release of the information is deemed to be in the public interest.

In order to ensure that appropriate disclosures accompany information on any disciplinary complaint, NASD Regulation is also proposing to require in new subparagraph (c)(2) of the Interpretation that any disciplinary complaint be accompanied by disclosure regarding the status of the complaint. Subparagraph (b)(1) of the

[6] NASD Regulation maintains the authority and responsibility to enforce compliance with MSRB rules with respect to member firms.

[7] With respect to the methodology for the release of information on complaints and decisions, it is anticipated that information will be released through an omnibus press release (that is subsequently included in an NASD Notice to Members), a press release on an individual matter, or through the NASD Regulation WebSite.

Interpretation currently requires disclosure that ''the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.'' The proposed amendment would expand this disclosure to include the following statement: ''Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.'' NASD Regulation believes that this disclosure will help to enable recipients of the information to view it in an appropriate context and, thereby, provide appropriate protections to the respondent.

Notice of Non-Final Disciplinary Decisions

With respect to non-final disciplinary decisions, NASD Regulation is proposing to amend the Interpretation to require that the current significance test for release of information on final decisions also be applied to the release of information on non-final decisions—with the additional requirement that non-final decisions be accompanied by appropriate disclosures as to the status of the case. It is proposed, therefore, that current paragraph (c) of the Interpretation be amended to be redesignated as subparagraph (d)(1) and to delete the provisions that currently prevent the Association from releasing information on non-final disciplinary decisions. As a result of these changes, the Association would be authorized to release information on non-final disciplinary decisions that impose monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension, or a bar from being associated with members firms.

In addition, redesignated subparagraph (d)(1) is proposed to be amended to require that information on all non-final and final decisions that contain an allegation of a Designated Rule be released, regardless of the extent of the sanction or whether any sanction had, in fact, been imposed. NASD Regulation believes that where information on a disciplinary complaint is released because it includes an allegation of violation of one or more Designated Rules, information on the decision involving the same matter should also be released based on the same public policy interests that justify the release of complaint information—regardless of whether the decision results in the finding of a violation and the imposition of sanctions, a dismissal of the allegation, or a reversal of earlier findings.

Moreover, consistent with the same provision proposed in subparagraph (c)(1), it proposed that renumbered subparagraph (d)(1) be amended to authorize the President of NASD Regulation to release information on ''any decision or group of decisions'' that involve a significant policy or enforcement determination where the release of the information is deemed to be in the public interest.

Renumbered subparagraph (d)(1) allows a waiver of the release of information in a particular case where the release of information would be deemed to violate fundamental notions of fairness or work an injustice. NASD Regulation is proposing to amend this provision to transfer the authority to grant exceptions from the Board of Governors of the NASD to the National Business Conduct Committee (''NBCC''), in order to facilitate consideration of any application for an exception pursuant to the standard NBCC review procedures for motions by respondents.

Finally, NASD Regulation is proposing to add new subparagraph (d)(2) to require that the information required by subparagraphs (b)(2)–(4) accompany such a non-final decision, thereby providing appropriate disclosures regarding the status of any non-final disciplinary decision.

General

The Interpretation is proposed to be amended to replace references to the ''membership and the press'' with a general reference requiring the ''public'' release of information on complaints and decisions. Such a general reference will permit the Association to choose any appropriate methodology to release information in an environment where the methodologies for informing the public are changing frequently. It is believed that the current focus of the Interpretation on releasing information ''to the membership and the press'' makes a distinction between forms of publication that is no longer meaningful.[8]

Moreover, renumbered subparagraphs (e), (g), and (h) are proposed to be amended to delete current language prohibiting the release of information until the expiration of the time for appeal or call for review or during the pendency of any appeal. As a result of these changes, the Association will be permitted to release information on non-final disciplinary decisions pursuant to the standards adopted in new subparagraph (d)(1).

Other conforming amendments are proposed to renumbered subparagraphs (e)–(m).

Implementation of Proposed Rule Change

NASD Regulation is proposing that the proposed rule change be effective 30 days after the date a Notice to Members is issued announcing adoption of the proposed rule change and containing the list of Designated Rules. The Notice to Members will be issued within 45 days of SEC approval.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that the proposed rule change to expand the Association's authority to release information on significant disciplinary complaints and significant final and non-final disciplinary decisions is consistent with the Association's obligations to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[8] At the time this language was originally adopted, it was most likely assumed that only NASD members would have access to information published to the membership and the general public would have access to such information only through the press. Today, NASD Notices to Members that contain information on disciplinary decisions and cancellations of membership are available through a number of electronic third-party vendors, including LEXIS, with the result that persons outside of the membership have the same access to releases to the ''membership'' as they do to information published by the press. It is also anticipated that the Association's WebSite on the Internet will post information that was previously issued through press releases and Notices to Members, further blurring the distinction between these two forms of publication. Finally, the ''press'' now makes information available to the public through different technologies, including broadcast and computer-accessed media.

[9] 15 U.S.C. § 78*o*–3.

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by April 8, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6714 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2518]

Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union; Notice of Meeting

The Department of State announces that the Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on April 11, 1997, beginning at 10:00 a.m. in Room 1105, U.S. Department of State, 2201 C Street, NW, Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 1997 competition of the Program for Study of Eastern Europe and the Independent States of the Former Soviet Union in connection with the ''Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, as amended.'' The agenda will include opening statements by the Chairman and members of the Committee and, within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the independent states of the former Soviet Union,'' based on the guidelines contained in the call for applications published in the Federal Register on October 4, 1996. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 736–4572, by April 8, 1997, providing their date of birth, Social Security number, and any requirements for special needs. All attendees must use the 2201 C Street, NW, entrance to the building. Visitors who arrive without prior notification and without a photo ID will not be admitted.

Dated: February 11, 1997.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 97–6739 Filed 3–17–97; 8:45 am]

BILLING CODE 4710–32–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Request for Comments Concerning Financial Services Negotiations Under the General Agreement on Trade in Services of the World Trade Organization

ACTION: Notice and request for comments.

SUMMARY: The Office of the U.S. Trade Representative (USTR) is soliciting public comments on the requests made to U.S. negotiating partners in the negotiations on financial services under the General Agreement on Trade in Services (GATS). The GATS is one of the Uruguay Round agreements administered by the World Trade Organization (WTO). Interested persons are invited to submit their comments on market-opening commitments that should be sought in the financial services sector by April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Deputy Assistant U.S. Trade Representative for Services and Investment, Office of the United States Trade Representative, (202) 395–7271 (for insurance issues and for general GATS issues), or Matthew Hennesy, Director, Office of Financial Services Negotiations, U.S. Department of the Treasury, (202) 622–0151 (for financial services other than insurance).

SUPPLEMENTARY INFORMATION: Negotiations on financial services were extended for six months at the end of the Uruguay Round to allow for further progress. The current interim financial services agreement of July 1995 will expire at the end of 1997, when WTO Members have a 60-day period in which to modify (or withdraw) their commitments. The negotiations will formally commence in April, at the first meeting of the WTO Committee on Trade in Financial Services, the negotiating body.

The United States is a full participant in the interim arrangement and is entitled to all market access and national treatment commitments scheduled by other participants. In its schedule of commitments, in force since June 30, 1995, the U.S. has committed to protect the existing investments of foreign financial services providers in the United States. The U.S. took an MFN exemption, and thus reserved the right to provide differing levels of treatment, with respect to expansion and new activities by these financial services providers, and or with respect to new entrants to the U.S. financial market.

The United States is in the process of preparing requests for market-opening commitments from other countries participating in the negotiations. These requests may be submitted as early as May 1997.

The U.S. objective in the negotiations is to obtain significantly improved commitments that provide financial services suppliers substantially full market access and national treatment on a non-discriminatory basis. Interested persons are invited to submit their comments on commitments the United States should seek in insurance, banking, securities, and other financial services.

[10] 17 CFR 200.30–3(a)(12) (1989).

Comments should be filed no later than April 17, 1997. Comments must be in English and provided in 20 copies to Peter Collins, Deputy Assistant U.S. Trade Representative for Services and Investment, Office of the United States Trade Representative, Room 301, 600 17th Street, Washington, D.C. 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–6802 Filed 3–17–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–97–006]

Notice of Public Hearing on the Canadian Pacific Railroad Drawbridge Across the Upper Mississippi River, Mile 699.8, at Lacrosse, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Canadian Pacific Railroad Drawbridge, at LaCrosse, Wisconsin.

DATES: The hearing will be held at 1 p.m., April 22, 1997.

ADDRESSES: (a) The hearing will be held in the Conference Room of U.S. Fish and Wildlife Resource Center, 555 Lester Avenue, Onalaska, Wisconsin 54650.

(b) Written comments may be submitted to and will be available for examination from 8 a.m. to 4 p.m., Monday through Friday, except holidays, at the office of the Director Western Rivers Operations, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2398.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Director Western Rivers Operations, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2398.

SUPPLEMENTARY INFORMATION: The Coast Guard has received numerous comments from the public indicating the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates there were 269 marine collisions with the bridge since 1980. These collisions have caused moderate to heavy damage to the bridge. Based on this information, the bridge appears to be a hazard to navigation. This may require increasing the horizontal clearance on the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed, giving due consideration to the necessities of free and unobstructed water navigation. The necessities of rail traffic will also be considered.

Any person who wishes, may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Director Western Rivers Operations, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2398, Telephone: 314–539–3900 Ext 378, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Director, Western Rivers Operations, Bridge Branch. Transcripts of the hearing will be made available for purchase upon request.

Authority: 33 U.S.C. 513; 49 CFR 1.46(c)(3).

Dated: March 6, 1997.

T.W. Josiah,

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

[FR Doc. 97–6736 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 96–063]

Incineration of Solid Waste Aboard U.S. Coast Guard Cutters, Environmental Assessment and Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared an Environmental Assessment (EA) and proposed Finding of No Significant Impact (FONSI) of marine incinerators on board its certain classes of cutters (vessels larger than 65 feet in length) for the purpose of burning shipboard solid waste to mitigate its accumulation. A notice of availability of the EA and the FONSI was placed in the Federal Register of 26 November 96 to invite comments from the public. No comments were received during the 30-day comment period. This notice announces the availability of the final EA and FONSI to concerned agencies and the public.

ADDRESSES: Requests to receive a copy of the EA and FONSI should be mailed to the Commanding Officer (ELC code 024), 2401 Hawkins Point Road, Baltimore, MD 21226–5000. The documents may also be picked up from the same address between 8 a.m. and 3 p.m. EST, Monday through Friday, except Federal Holidays, by contacting Mr. Hari Bindal at telephone (410) 762–6732, and FAX (410) 762–6868.

FOR FURTHER INFORMATION CONTACT: Mr. Hari Bindal, Environmental Protection Specialist, Engineering and Logistics Center, Equipment Management Division (ELC 024), at (410) 762–6732.

Background

U.S. Coast Guard operates a fleet of boats and cutters on the U.S. domestic and international waters to accomplish its major missions of Law Enforcement, Defense Operations, Search and Rescue, Ice Operations, Marine Science, Pollution Response, and Aids to Navigation. The cutters going long voyages (5 days and more) and having a large crew (over 50), face problems with shipboard generated solid waste (trash, garbage), and waste oil. To comply with the International Convention for the Prevention of Pollution from Ships (MARPOL) and the U.S. Act to Prevent Pollution from Ships (APPS), which prohibit disposal of plastics anywhere at sea and restrict discharge of other waste to certain distances from shore, and to comply with other U.S. and international environmental laws and regulations, the Coast Guard considered several alternatives of handling the shipboard generated solid waste and waste oil. After evaluating the pro and cons of all considered alternatives, Coast Guard proposed incineration as the means to handle the shipboard solid waste and waste oil.

An environmental assessment (EA) was prepared pursuant to the National Environmental Policy Act (NEPA) of

1969; and the Coast Guard's NEPA Implementing Procedures, to evaluate the potential environmental impacts of the proposed installation of incinerators on certain classes of Coast Guard cutters. The EA concluded in to 'finding of no significant impact (FONSI), that mean the concentrations of pollutants generated by the proposed installation of incinerators on board certain classes of Coast Guard cutters are low enough that the physical, biological, and atmospheric effects on the marine environment are insignificant for all areas of operation. Consequently, an Environmental Impact Statement was not required.

As required by NEPA, the EA and FONSI were made available to concerned government agencies and a 'notice of availability' appeared in the Federal Register of 26 November 1996 [61 FR 60137] to invite peoples' comment. No adverse comments were received by the end of the 30-days comment period.

The EA and FONSI are now final. Concerned agencies and the public may request copies of the EA and FONSI from the address above under **ADDRESSES**, and by contacting Mr. Hari Bindal, at (410) 762–6732.

Dated: February 26, 1997.

Debabrata Ghosh,

Acting Chief, Equipment Management Div. (ELC–02).

[FR Doc. 97–6737 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–97–16]

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 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–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 13, 1997.

Mardi R. Thompson,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28849.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 119.5(g), 121.107, and 121.591.
Description of Relief Sought: To permit the petitioner to conduct VFR operations from its Bethel base, and all VFR sightseeing/air tour operations, with ceiling and visibility requirements that will be no more restrictive than those specified in §§ 91.155 and 135.205. Additionally, the petitioner requests that it be allowed to conduct all scheduled and charter operations from its Bethel base to utilize part 135 flight following procedures currently in use in lieu of the dispatch requirements contained in §§ 121.107 and 121.591.

Docket No.: 28850.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.356(b).
Description of Relief Sought: To allow the petitioner to operate its DC–3 aircraft under requirements specified in § 135.180 as it concerns Traffic Collision Avoidance System (TCAS).

Docket No.: 28854.
Petitioner: Seaborne Seaplane Adventures.
Sections of the FAR Affected: 14 CFR 121.395.
Description of Relief Sought: To allow the petitioner relief from the phrase ''* * * shall provide enough qualified aircraft dispatchers * * *'' contained in § 121.395 and a 30 day extension to complete all of the requirements for transition to Part 121 operations.

Docket No.: 28856.
Petitioner: Frontier Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 121.
Description of Relief Sought: To permit the petitioner an extension of the deadline for transition from part 135 operations to part 121 operations.

[FR Doc. 97–6930 Filed 3–14–97; 2:46 pm]

BILLING CODE 4910–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held April 2, 1997, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve: a. Proposed Final Draft, Human Engineering Guidance for Data Link Systems; b. Proposed Final Draft, Minimum Operational Performance Standards for Aeronautical Telecommunication Network Avionics; c. Proposed Update to the Terms of Reference for Special Committee 189/ Working Group 53, Air Traffic Services Safety and Interoperability; d. Proposed Update to the Terms of Reference for Special Committee 182, Minimum Operational Performance Standard for Avionics Computer Resource; (4) Discuss/Take Position on: a. Report on Activities of Special Committee 169 (Requirement for Change 1 to DO–219; Terms of Reference Review to Determine if Special Committee 169 Has Work Remaining; Identify a Permanent Chairman for Special Committee 169 If There Is Work Remaining); b. Report on Aviation Community Desire for a Mode S-based Traffic Information Service Data Link; c. Report on Proposed Change to DO–204, Minimal Operational

Performance Standards for 406 MHz ELT's; d. Report on Inclusion of HIRF ''Pass-Fail'' Criteria in DO–160D, Environmental Conditions and Test Procedures for Airborne Equipment; e. Proposed Letter to the FAA on NAS Architectural Issues Pertaining to Communication, Navigation, and Surveillance; f. Technical Management Committee Systems Management Working Group Report; (5) Other Business (RTCA Annual Membership Meeting and Awards Luncheon); (6) 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, NW., 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 12, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–6806 Filed 3–17–97; 8:45 am]

BILLING CODE 4810–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Pellston Regional Airport of Emmet County, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Pellston Regional Airport of Emmet County, Pellston, Michigan, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 17, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond Thompson, Airport Manager, of the County of Emmet, at the following address: Pellston Regional Airport of Emmet County, U.S. 31 North, Pellston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Emmet under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Pellston Regional Airport of Emmet County under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 27, 1997, the FAA determined that the application to impose a PFC submitted by the County of Emmet was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 10, 1997.

The following is a brief overview of the application.

PFC Application No.: 97–05–I–00–PLN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1998.

Proposed charge expiration date: April 1, 1998.

Total estimated PFC revenue: $17,500.00.

Brief description of proposed project: Replace Aircraft Rescue Fire Fighting Vehicle.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: FAR Part 135 operators who file FAA Form 1800–31.

Any person may inspect the application in person at the FAA Office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the County of Emmet.

Issued in Des Plaines, IL, on March 11, 1997.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–6807 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Advanced Rural Transportation Systems Strategic Plan; Request for Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for information.

SUMMARY: The Federal Highway Administration is seeking comments from all sources (public, private, governmental, academia, professional groups, public interest groups, etc.) on the Strategic Plan for Advanced Rural Transportation Systems (ARTS) portion of the Intelligent Transportation Systems (ITS) Program. The ARTS Strategic Plan defines the vision, mission and goals from the Federal perspective for achieving the benefits of the ITS program in rural areas. This is not a request for proposals or an invitation for bids.

DATES: Your comments on this announcement should be submitted no later than April 17, 1997.

ADDRESSES: Your comment on these important issues are greatly appreciated, but responses will not be acknowledged. Responses should be mailed to FHWA, Intelligent Transportation Systems Joint Program Office, HVH–1, Rm 3400, Washington, DC 20590. However, E-mail responses are encouraged, and should be addressed to raymond.resendes@fhwa.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Resendes, ITS Joint Program Office, (202)366–2182, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:15 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: ITS uses advanced communications, computer and surveillance technologies to address surface transportation problems. When effectively deployed, ITS services can provide safer and more secure travel, improve traffic flow in congested areas, reduce the harmful environmental impacts of traffic congestion, and help travelers and businesses achieve improved levels of productivity. The national ITS program is being advanced as a partnership between the private sector, academia and all levels of State

and local government. A complete description of the ITS program is contained in the March 1995, National ITS Program Plan, developed jointly by the US DOT and ITS AMERICA. The National ITS Program Plan is available from ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC. 20024–2730, phone (202) 484–4847.

This is a request for comment on the Strategic Plan for Advanced Rural Transportation Systems portion of the ITS program. The ARTS Strategic Plan defines the vision, mission and goals from the federal perspective for achieving the benefits of the ITS program in rural areas.

Advanced Rural Transportation Systems (ARTS) Strategic Plan

1. Executive Summary

The U.S. Department of Transportation (U.S. DOT) created the Intelligent Transportation Systems (ITS) Joint Program Office (JPO) to manage the ITS program. JPO is housed within the FHWA, but has liaisons with each modal Administration (except the Federal Aviation Administration) within the U.S. DOT. The JPO also receives policy guidance directly from the ITS Management Council which is chaired by the Deputy Secretary of Transportation. Although this document will be issued by the FHWA, that agency will hereinafter be referred to as the U.S. DOT in order to reflect the variant roles of each modal Administration in the ITS program.

This Strategic Plan has been developed for the Advanced Rural Transportation Systems (ARTS) portion of the ITS Program. The plan focuses on the Federal Government's role in developing rural ITS options and prudently managing emerging ITS technologies within rural settings from conception to viable options for implementation. The Strategic Plan meets the needs of the US DOT by providing a basis for sound decision-making for program development, as well as being consistent with the Government Performance and Results Act of 1993 (GPRA). Items in italics are references from, ''Strategic Planning, An Overview for Complying with GPRA,'' by Philip Blackerby.

The plan also looks at the ARTS program's role in developing and fostering the application of ITS in rural areas over the next twelve years. It describes the program's vision, mission, goals, objectives, and measures. Because of the diversity of needs and varied settings in rural America, this plan also developed seven critical program areas (clusters) which provide areas of common interest and focus within the overall program. A companion program plan (which will be available in February 1997), sets the strategic priorities, and lays out the program projects by year for the next five years. Together, both plans provide the road map for the ARTS Program.

Note: For Purposes of this report, rural America is defined as communities or areas with less than 50,000 residents.

2. Introduction

The GPRA requires each Federal agency to prepare:

(1) Strategic plans that define an agency's mission and long-term goals; (2) annual performance plans containing specific targets; and (3) annual reports comparing actual performance to the targets set in the annual performance plans.

US DOT has already put forth significant efforts to assure that the overall ITS program is consistent with the GPRA, including the preparation of the ITS Strategic Plan and the development of a set of measures for evaluating the program's progress [1]. While every element in the ITS program should respond to the overall goals and objectives provided in the overall ITS program, it is recognized that conditions and needs vary greatly across the United States and, as a result, the focus of the ITS program and its elements may vary from area to area. Accordingly, the ITS Architecture identified the following three separate scenarios to aid in thinking about and analyzing the different needs and required focus:

1. Urban;
2. Inter-Urban;
3. Rural.

Each has its own set of needs, priorities and concerns. For example, the major initiative for urban areas focuses on the mitigation of congestion and improvement in traffic flow that ITS technologies can offer.

On the other hand, the ARTS Program is concerned with travel within and through rural America. The conditions found in rural travel (including inter-urban travel through rural areas), the characteristics of the travelers, and the costs of maintaining the rural system all point to the need for a focused program for developing advanced technology solutions for transportation in rural America. Some of the attributes found in rural environments that make this need critical are:

1. Mix of users (rural and urban travelers);
2. Secondary roads with less frequent maintenance;
3. Steep grades/blind corners/curves/few passing lanes;
4. Large variance in travel speeds (frequent passing);
5. Long distance travel;
6. Fewer convenient detour options;
7. Adverse road surface and weather conditions;
8. Few navigational signs;
9. Less existing infrastructure (per square mile);
10. Light usage/large geographical areas impeding rapid emergency detection and response;
11. More motor vehicle deaths with higher frequency of accidents/vehicle mile traveled and more severe accidents than found in urban areas;
12. Recreational travelers needing traveler information services;
13. Limited or non-existent public transportation services;
14. Many, often uncoordinated, providers of transportation services to meet health and human services needs; and
15. Very dispersed systems with high unit costs for service delivery, maintenance, and operations.

This document is the Strategic Plan for the US ARTS Program. It is important to note that this Strategic Plan represents the US DOT perspective on rural ITS, and the US DOT's roles and responsibilities for improving the rural transportation system through advanced technologies. In this role, the US DOT program will work to bring rural ITS technologies to maturity and examine institutional arrangements for their deployment, providing feasible options to rural areas. In this context, the role of the ARTS Program is not to provide long term operational funding to rural ITS systems (though Federal funds may be available from other programs). Rather, the role of the ARTS Program is to work in partnership with those responsible for the implementation of ITS in rural areas—States and local agencies, and the private sector—to provide appropriate and sustainable (i.e., Can be operated using existing and projected funding and resources) ITS solutions to rural problems and needs. Consequently, others will need to develop their own plans to compliment and coincide with this one.

The latter portion of this document identifies the goals and objectives that are the priority of the ARTS Program. It outlines the Federal role in advanced rural transportation systems and is

[1] These ''Few Good Measures'' include measures to meet goals in the following categories: Time savings; Reductions in crashes; Reductions in fatalities; Increased throughput; Cost savings; and Improved customer satisfaction. (''Implementation of the National Intelligent Transportation System Program: 1996 Report to Congress'').

consistent with the guidelines provided by the GPRA.

The companion ARTS Program Plan is also under development as described in the final section of this document. The program plan includes the setting of strategic priorities, another key follow up element in strategic planning, as well as specifying candidate projects by year to address the uncertainties and ultimately lead to the deployment of rural ITS.

3. Potential Barriers

There are three potential barriers to the development and acceptance of the ARTS Strategic Plan. These are:

1. Acceptance of the role of the US DOT and participation by others critical to the process;

2. The focus of the Strategic Plan on the US DOT role in rural ITS in lieu of a ''National'' plan; and

3. The degree of variability within the rural transportation system.

The development and implementation of the Strategic Plan depends upon its acceptance by the key partners required for its implementation. Throughout the strategic planning process, a critical guidance has been provided from the field offices of the US DOT as well as representatives of State and local agencies directly responsible for implementing rural ITS in their areas and independent consultants. However, there may also be some dissatisfaction with the ARTS program's focus on finding the answers to what is not known about rural ITS through research, development, field tests, and targeted deployments at the expense of direct funding of deployment alone. This may become an issue during the comment period prior to the final version of the plan. Given this, it is important to emphasize that reducing the gaps in knowledge is the focus of the ARTS program. Funds for transit operations and other activities may still be provided through traditional Federal funding sources not part of the ARTS program.

The second issue concerns the Strategic Plan's focus on the US DOT's roles and responsibilities, rather than the development of an all encompassing National Plan. As stated in the Introduction, the US DOT is only one partner in the ultimate development and implementation of a sustainable mix of ITS Services in rural America. Other participants include the State and local agencies and other providers of ITS, the private sector, and the public. A concerted effort was made to ensure that the ARTS Program incorporate the interests of all of the participants; however, the Strategic and Program Plans are still designed to reflect the US DOT role and activities in advanced rural transportation systems. Given the diverse nature of the participants and interests across rural America, it was not feasible to develop a ''National'' plan encompassing the views, roles, and responsibilities of each participant. Development of a National rural ITS vision and plan may, however, be a worthy exercise to carry out in the future in coordination with ITS America's ARTS Committee and other organizations.

The last issue is a more difficult problem to solve. The wide variety of needs found in rural settings across the US has made it difficult for participants to recognize similarities and agree to program goals, objectives, or program elements. For example, at first glance, people often perceive few similarities between the very disparate rural areas of Death Valley, The Upper Peninsula in Michigan, Jackson Hole, Wyoming, or Cape Cod. It was found, however, that many of the perceived differences are really associated with the differences in the mix of needs within each rural area. Thus, US DOT has spent substantial effort in developing a set of Critical Program Areas, or Clusters, to provide a common identifiable set of views of rural America, its needs, and how ITS can respond. These Critical Programs Areas have become key elements in developing the specific approaches for the rural ITS program described later, and in minimizing the debate and confusion over ''What is Rural?''

4. Vision and Mission

The Vision statement describes a future that management envisions. It provides a description of what rural America will be like when the rural ITS program is fulfilled. The Mission describes the organization's purpose or changes that the organization intends to directly effect. These two statements provide the direction and purpose upon which the ARTS program is based.

Vision

An enhanced quality of life for rural residents through safer, more secure, available and efficient movement of people and goods in rural America through the judicious application of advanced ITS technologies.

Rural America accounts for a small and dispersed portion of our nation's population, yet it encompasses a significant portion of the transportation system. Rural areas account for 80 percent of the total US road mileage and 40 percent of the vehicle miles traveled, and they have a unique set of characteristics associated with the travel upon them and their operations and maintenance. Consequently, the rural traveler has a different set of priorities and needs than does his/her urban counterpart. These differences reflect the rural environment of long distances, relatively low traffic volumes, relatively rare traffic congestion, travelers unfamiliar with the surroundings, and rugged terrain in remote areas. Furthermore, rural characteristics that solicit ITS solutions include an over representation of fatal crashes (About 60 percent of traffic fatalities and 55 percent of work zone fatalities occur in rural areas), safety problems related to high speeds on non-interstate rural roads and increased response time for Emergency Medical Services. Many rural communities now have excellent all-weather road systems, but many rural residents remain isolated because of their inability to travel. Presently, 38 percent of the nation's rural residents live in areas without any public transit service and another 28 percent live in areas in which the level of transit service is negligible[2].

The vision aims to improve the safety and security of the rural traveler, especially given the differences with the urban environment. Similarly, isolation is a factor that impacts both the transportation disadvantaged and the economic vitality of the communities in rural America; therefore, reducing isolation is important. Additionally, as resources continue to become more scarce, using advanced technologies to improve the efficiency and productivity of operating and maintaining transportation services is crucial, especially given the high costs associated with rural transportation operations and maintenance.

Mission

To ensure the development and application of Advanced Rural Transportation Systems through research, demonstrations, evaluations, and the promotion of cost-effective technologies ready for implementation, and including the provision of training and technical assistance to transportation providers planning or implementing ITS technologies.

The US DOT will work with a wide range of constituents to identify potential technological solutions to rural problems, and to study these potential solutions to determine cost-effective ways to implement them. As stated earlier, the role of the ARTS Program is to develop rural ITS options

[2] Compiled from Various tables in Highway Statistics 1994. Federal Highway Administration, October 1995.

and husband emerging ITS technologies within rural settings from conception to viable options for implementation. This effort will focus on developing the options for ITS in rural America and reducing the uncertainty surrounding their implementation. It includes examining technological, political/institutional, and planning issues. Note, that the program may entail research, field operations tests, or targeted model deployments designed to reduce the uncertainty associated with particular rural ITS services. The specific elements in the program will be described in the companion ARTS Program Plan.

Initially they may be stand-alone subsystems, however in later years, these subsystems may be coordinated and integrated as necessary. Once these systems and subsystems are defined, the US DOT will assist others in the implementation of these solutions through a variety of outreach activities. Ultimately, these systems will be mainstreamed into participating agencies' long-range plans and capital improvement programs.

4. Values and Philosophies

The Values describe things that are important to an organization that will impact how the Vision and Mission are fulfilled, and yet may not be directly addressed in their statements. These are the underlying principles of the organization. The Philosophy Statements either describe the underlying philosophy that governs the organization, or state management commitments describing the promises management may make to its customers, employees, or other stakeholders. It is the values and philosophies that provide the underlying assumptions upon which the program is built to meet the vision and mission.

Values

Building upon the values each administration may have already defined, the values that are considered important to the organization in developing successful Advanced Rural Transportation Systems are:

Equity—The improvements made via this program will be distributed in a fair and non-discriminatory manner;

Decision making—Balanced and appropriate decisions should be made reflecting the issues and concerns of those impacted and considering all feasible alternatives (their costs, benefits, and outcomes);

Collaboration—Achieving the vision requires many people from a variety of disciplines to work together. This value is at the heart of the US DOT staff, and has been clearly demonstrated through the cross-cutting Rural Action Team; and

Leadership—A strong and enthusiastic proponent is needed to lead the program.

Philosophies

The following philosophies, or guiding principles, underlie the Strategic Plan for Advanced Rural Transportation Systems. Collectively, they provide the assumptions and foundation for the goals, objectives, and program elements.

The Federal role for rural ITS is one of support and fostering the implementation of advanced ITS technologies in rural America by others. It is an enabling program designed to bring rural ITS technologies to maturity and explore institutional arrangements that provide feasible options to rural areas wanting to implement ITS.

The ARTS must be sustainable.

They must be developed through public/public and public/private partnering initiatives involving both the highway community and the public transportation community, business interests, etc. They must be seamlessly connected to the rest of ITS (i.e., urban, suburban-rural connectivity, and highway-transit-ridesharing connectivity) and also compatible with non-ITS facilities and systems and should employ innovative financing principles.

5. Goals and Strategic Objectives

The Goals describe the general results or outcomes the organization intends to achieve. They are measurable but usually not measured. For each goal, strategic objectives are defined. Strategic Objectives are written statements that describe an intended outcome. Strategic Objectives clearly describe measurable targets of achievement.

As opposed to the abstract nature of the vision and mission, the goals and strategic objectives are definable in real and measurable terms. The six characteristics of Strategic Objectives include: (1) An external focus, (2) measurable, (3) achievable, (4) clear, (5) comprehensive, and (6) supporting the mission and goal statements. Strategic objectives can also be defined for both outputs of the program and outcomes of the program. Outputs are the services and products that the program provides. Outcomes are measures of their impact in the rural environments.

The goals for the ARTS Program and their strategic objectives are provided below.

There are three types of objectives: Administrative outputs, program outputs and outcomes. The administrative output objectives describe measurable internal or administrative actions that the US DOT will take, hence they are not externally focused. Program output objectives measure the extent to which the US DOT has achieved its role as facilitator—including the extent to which others have been made aware of the solutions, and the extent to which these systems have been deployed. Outcome objectives are measures of the impact that the implementation of the rural ITS systems has on rural America. Outcomes capture the achievement of the overall goals. For example, developing and providing rural ITS awareness seminars would meet an administrative objective. Deploying a safety information system would be an achievement of a program output objective, and reducing the rate and frequency of crashes due to the implementation of this system would be an achievement of an outcome objective.

The long-term outcome objectives are shown as part of this Strategic Plan. The administrative and program objectives are by necessity tied to the specific elements of the companion Program Plan. Therefore, they will be specified as part of that document.

Goals

The goals of the Rural ARTS Program are closely tied to those of the overall ITS program. Priority is given to those goals that will meet the more critical needs of travelers and transporters of goods in rural areas. Consequently, the primary goals of the ARTS program are safety and efficient mobility, versus those of urban systems which are congestion relief and increased throughput. The five goals of the program are: (1) Safety and security; (2) mobility, convenience and comfort; (3) efficiency, economic vitality and productivity; and and environmental conservation.

Safety and Security—Improve the safety and security of users of the rural transportation system.

Improving safety and security are continually identified as critical goals for rural transportation and ITS. Rural crashes tend to be more severe, and have longer response times due to the long distances and isolated settings. The characteristics of rural crashes mirror the diverse nature of the system, having a wide variety of causal factors. In some cases, trip fatigue takes its toll, while in other cases poor visibility or unsafe road conditions lead to crashes. ITS can play a major role in reducing the rate and frequency of crashes through a wide variety of safety advisory systems. ITS can also help reduce the consequences

of the crashes once they occur by enabling emergency responders to reduce response time and provide improved care. Automatic vehicle location systems can expedite the response to emergency situations on board transit vehicles. ITS can also create a more secure rural transportation system by reducing the exposure to unsafe situations. This consists of systems that provide immediate assistance to travelers in rural areas that experience problems, such as, getting lost or having a car breakdown. In addition, law enforcement agencies can apply advanced technologies to meet their needs, including enhanced officer safety, improved dispatching, and simplified reporting.

Safety and Security Strategic Objectives.

1. Reduce the frequency of crashes (via pre-crash warning systems);
2. Reduce the rate of crashes (via pre-crash warning and advisory systems);
3. Reduce the severity and fatality level per incident from current levels (via improved response time and care); and
4. Reduce exposure to unsafe situations (e.g., getting lost, car breaking down, etc.) (via emergency notification system).

Mobility and Convenience—Enhance personal mobility and accessibility to services, and enhance the convenience and comfort of all users of the transportation system.

One of the major characteristics across all of rural America is isolation and the relatively fewer available transportation options. People should have access to transportation, especially to enable them to meet basic life needs such as getting health care or buying staples. This goal consists of reducing isolation by increasing accessibility to services. This is especially true given the aging of America, and the increasing likelihood that rural Americans will be older with additional transportation needs in the years ahead. In some cases, there may be opportunities to implement technologies that enable older drivers to extend the period that they are able to drive. For those unable to drive, this increase in accessibility consists of advanced rural transit systems. Another important aspect of this goal includes providing alternative means of transportation to tourists in areas that cannot accommodate a large number of vehicles. It also addresses the need for convenient and comfortable travel through the development of information systems that help people get the services they need (gas stations, lodging, restaurants, hospitals, etc.).

The advances in communications and computing have created an alternative to transportation. Improving the ability of rural America to carry out their desired activities through telecommuting and remote computing is also an important aspect of enhancing mobility. Therefore, this goal must also address the evaluation and advancement of communications options for rural America as substitutes for desired travel. Examples of how transportation and ITS may help improve the connectivity of rural areas include: providing connectivity through sharing communications trunk lines used for ITS services; and making public right of ways available for communications link installation.

Mobility and Convenience Strategic Objectives

1. Increase the percentage of population with available and convenient transportation services to meet its mobility needs;
2. Improve access to services and tourist areas, and expand the availability of information about services; and
3. Improve the communications connectivity of rural areas and the ability to trade off communications with desired travel.

Efficiency—Increase operational efficiency and productivity of the transportation system, focusing on system providers.

In rural America this goal addresses the needs of rural transportation system providers, enabling them to carry out their services in a safe, efficient and productive manner. To some extent, this is a shift from the metropolitan ITS program whose primary goal is to reduce congestion. The long distances and sparse network often make operations and maintenance very expensive on a cost per unit basis, and the seasonally harsh nature of the rural environment can put providers, such as snow plow and transit operators, at risk. Also, the manpower and equipment per road mile, or transit vehicle is often much higher than in urban settings. Finally, weekend or seasonal peaks in traffic, severe weather conditions, backups due to crashes, or road construction with limited alternate routing all create congestion problems. Thus, improving the safety, efficiency, and productivity of operations and maintenance activities of the transportation providers, meet critical needs, especially through the application of coordinated advanced wide-area traffic management and traffic signal systems.

Efficiency Strategic Objectives

1. Reduce congestion and delay (e.g., in work zones, at events and tourist areas, etc.);
2. Improve incident management and response time;
3. Improve vehicle routing and diversion (e.g. trip coordination, pre-trip route selection, en-route delay and road condition information, and en-route notification of detour options); and
4. Improve operations and maintenance resource management and allocation.

Economic Vitality and Productivity—Enhance economic productivity of individuals, businesses, and organizations.

Many rural areas are economically depressed and their economic viability is limited by their isolation.[3] Rural ITS can improve their ability to compete by reducing their isolation, improving the efficiency of transportation services to businesses in the area, and letting the public know of their attributes. Likewise, tourist areas need to be able to provide information to their visitors and provide them mobility if they are to continue to attract visitors. The focus of rural ITS in meeting this goal is therefore, to keep rural areas viable and helping to provide the services needed to function competitively. Another aspect of this goal addresses the desires of small communities that want to maintain their communities as they are, and limit the amount of growth (e.g., Aspen, CO). The rural ITS program will identify opportunities to address their transportation needs, while also respecting their desire to control growth.

As discussed within the Mobility and Convenience Goal, isolation can also be reduced by improving the communications connectivity of an area. As rural areas become more connected, they become more viable areas for living and working. This goal, therefore, also addresses the evaluation and advancement of telecommuting from rural America as a means of reducing isolation and making the rural environment more livable.

Economic Vitality and Productivity Strategic Objectives

1. Improve access to and from rural communities for travel, goods and services, and information;
2. Improve knowledge of goods, services, and opportunities in rural communities (e.g. en-route information,

[3] Understanding Rural America, Economic Research Service, US Department of Agriculture, Agriculture Information Bulletin No. 710, Washington, DC, February 1995.

transportation service information, etc.); and

3. Improve transportation and communication facilities in and around rural communities.

Environmental Conservation—Reduce energy consumption and environmental costs and negative impacts.

While rural areas may not have air quality problems of the same magnitude as urban areas, there are still areas where there is a need to maintain good air quality and address other environmental problems. Consequently, opportunities to reduce the number of single occupant vehicles, vehicle miles traveled (VMT), and increase public transportation and ridesharing alternatives are essential. Many tourist attractions, such as National Parks, also suffer from the negative environmental impacts of large numbers of visitors. This goal includes opportunities to minimize the effects of large influxes of people into these sensitive areas. In addition, in rural areas there is a need to address the impacts of the transportation infrastructure, operations, and maintenance on the environment, including the reduction of impacts due to hazardous material spills, and the tracking of hazardous materials through the rural transportation system.

Environmental Conservation Strategic Objectives

1. Reduce Single Occupant Vehicles;
2. Reduce Vehicle Miles Traveled;
3. Improve hazardous material response (minimize environmental impacts); and
4. Reduce emissions per trip.

External Factors Assessment

External factors are key outside forces that may influence the success of the rural ITS program in achieving the above mission and goals; or have other impacts on the delivery of the program, and yet are outside the control of the agency.

One set of external factors with a focus on changes in legislation and the environment in Washington, D.C. can have a profound effect on the delivery of a long-term program. Of particular interest are the current hearings concerning Intermodal Surface Transportation Efficiency Act and its re-authorization in the next year. If the major priorities or funding mechanisms change as a result of the new legislation, the strategic plan may have to be modified and updated accordingly.

Likewise, shifts in the Federal and State Departments of Transportation roles and responsibilities may impact the fulfillment of the program. However, these shifts may not be due to specific changes in legislation, but can also be caused by changes in administration.

Another important set of external factors are changes in the economy, fuel prices, or concerns of the nation brought about by unique events. Terrorist acts can raise the importance of security throughout the transportation system. Another energy crisis will impact the amount and type of rural travel.

Equally important are watershed changes in technology that can totally change the costs and potential applications within the rural environment. Twenty years ago, no one could have predicted the rapid adoption of facsimile machines throughout the business world, or even the use of cellular phone technology that now makes many ITS applications possible. Significant developments of new communications systems by private industry, such as satellite communications networks, could greatly impact the cost-effectiveness of advanced rural transportation systems. Yet, the US DOT has little control over these types of developments.

The last factor is the ability of local rural communities to adopt new technologies and systems. However, the rapid infusion of new technologies in rural settings is hampered in a number of ways. First, rural areas are often some of the most fiscally constrained in America. There are large resource requirements for maintaining the current systems, and little additional funds for implementing new systems over the miles of rural network. Likewise, the staff resources are often limited in rural environments with one person taking on the roles and responsibilities typically filled by many specialists in denser areas, or even whole departments. ''Mainstreaming'' the consideration and evaluation of ITS strategies into multimodal transportation planning processes is also important if transportation planners and decision makers are to understand the costs and benefits of implementing certain technologies, particularly in comparison with more traditional or conventional improvements. Staffs must have the time and energy to plan and adopt the new systems to their current environments.

Recognizing these external factors and updating the strategic plan as conditions change over the life of the program will keep it aligned with the overall mission and goals described above.

7. Strategies

A Strategy is an approach, or an implementation methodology, that will lead to achieving a specific objective. It includes a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives.

Achieving the strategic objectives of the program means recognizing the extremely diverse nature of the rural transportation system. Diversity is exhibited in the system's wide range of motorists, managers, maintenance staff, operators, road types, terrain, climates, jurisdictions, land use, and seasonal characteristics. These diverse characteristics translate into a wide variety of needs, problems, and opportunities for improvement. Consequently, the ARTS solutions, i.e., the application of advanced technologies to meet these disparate needs, problems and opportunities, must be diverse as well. The strategies to identify these solutions must also recognize this diversity.

Given this diversity of the rural transportation system, and the wide breadth of the program (i.e., encompassing a large number of needs of a large number of users), the ARTS program has been organized into seven Critical Program Areas (CPA's). A major effort of the Rural Action Team during the development of the Strategic Plan, was the investigation of different cluster concepts and ways to find common areas of interest across rural America. It was found that while rural settings differ greatly (Jackson Hole, WY, vs. Death Valley, CA, vs. Cape Cod, MA), there was general agreement on the classes of needs that exist within each setting and the principal users of ITS. The clusters were therefore developed around major needs and service groupings. They are:

1. Traveler Safety and Security;
2. Emergency Services;
3. Tourism and Traveler Information Services;
4. Public Traveler Services and Public Mobility Services;
5. Infrastructure Operations and Maintenance;
6. Fleet Operations and Maintenance; and
7. Commercial Vehicle Operations.

The above division is the primary dimension for this cluster concept and focuses on identifiable needs and services categories. The Tourism and Traveler Information Services CPA, for example, refers to the needs and services that a visitor (both driver and passenger) unfamiliar with a rural area may require, as well as the Visitors and Tourism Bureaus, transit service

providers, information providers, etc., that provide the services to meet their needs. In a tourist resort area, this may be the main focus of the ITS program. In other areas, it may exist but plays a smaller role. Likewise, the Public Traveler and Public Mobility Services focus on reducing the isolation of the transportation disadvantaged and increasing the mobility for all of the public. Its constituents also include both the potential travelers and service providers. The maintenance and operations activities may also form their own divisions because of the costs of the provision of these services in rural areas. As ITS services are shown to reduce their costs, improve their efficiency, etc., these areas and the organizations responsible for them become natural constituents and advocates for the programs.

The clusters are not necessarily mutually exclusive and will overlap in their deployment in a specific region or rural setting. For example, services developed around a ''safety information cluster'' may also exist in the same area with services developed to meet the mobility needs. Similarly, clusters are ''fuzzy'' and the boundary between two related clusters may be difficult to discern at times (infrastructure versus fleet operations and maintenance).

Each rural area will have its own environmental conditions and constraints, frequency of needs, institutional settings, etc. These factors determine the importance and priority placed upon each cluster within an area, and the mix of ITS services that may be considered for implementation.

The clusters provide common areas of understanding and focus and, thus, make the ARTS Plan implementation more manageable. The Program Plan describes the user services, functional requirements, and knowledge gaps that apply to each CPA. Aspects of a program element may address more than one CPA. Consequently, The activities associated with some CPA's may consist of a number of research and field test activities, while activities associated with another will focus on deployment.

Though much needs to be done to determine exactly which projects will be initiated within each CPA, some generalizations can still be made. The research and field testing efforts that take place within this program will be building upon the wealth of knowledge and proven solutions that have been developed under other parts of the ITS program. It is not expected that the rural advanced technologies will be significantly different from their urban counterparts, rather the difference between the two will be characterized through the implementation methods. Consequently, the bulk of the program will probably not consist of basic research, but rather will focus on overcoming the rural barriers that hamper cost-effective implementation. While such a focus will ensure that the seamless connectivity between urban and rural systems is achieved, care must be taken to avoid attempts to fit urban solutions into rural problems.

Traveler Safety and Security

The rates and severity of accidents have been repeatedly identified as one of the most serious problems associated with rural transportation. Accidents per-vehicle-mile traveled are higher than in urban areas, and tend to be more sever due to higher operating speeds. Once an accident occurs, the time to notify and respond are also on the average longer, and trauma centers are located further away. Consequently, improving safety and security has been identified as a key cluster or critical program area.

The needs in this cluster center around improving the driver's ability to operate the vehicle in a safe and responsible way and in reducing the influence of other factors that may help cause an accident, such as, poor road conditions, visibility, etc. This cluster focuses on the prevention of accidents before they occur and in reducing the severity of the accident if it does take place.

Another aspect of this cluster is increasing the security (both actual and perceived) of the traveler along his/her trip. Providers of transportation services have a responsibility to provide a safe and secure environment in which to travel. A traveler may be injured while traveling even though he/she has not been involved in a vehicular accident (i.e., a transit patron is assaulted while waiting for a vehicle, or someone using a rural rest stop is robbed). Thus, providing a secure environment through remote monitoring, silent alarms, etc., is an important ITS function within this cluster.

Some of the advanced systems that may be explored and developed under this cluster are:

1. *Wide area information dissemination systems* (via radio, computer, TV, etc.) both pre-trip and en-route of safety information, such as weather and road conditions;

2. *Site-specific safety advisories and warnings* (e.g., the enhanced radar detector for hazard warning, visibility sensors, variable speed limits, collision avoidance, work zone detection/ intrusion alarms, rail crossing alerts, shoulder detection, etc.) to alert motorists of imminent problems;

3. *Safety surveillance and monitoring* (e.g., on transit vehicles (for malcontents and for ill riders), at park-and-ride lots, rest areas, etc.); and

4. *In-Vehicle monitoring and detection systems* including such items as driver monitoring (alertness, status), vision enhancement, perimeter detection, shoulder detection, etc.

Emergency Services

Once an incident (accident or emergency situation) occurs, there is a need for emergency services. These can be in the form of ambulances and medical care, police, fire, tow trucks, and other vehicle assistance, etc. The isolation of rural areas, extensive time from the incident to detection, and response once the incident is detected all contribute to notifications and response times much longer than found in denser areas, often of an hour or more. This leads to much more severe consequences than would occur with rapid response. Given an incident, the Emergency Management Team must be notified, a decision on how to address the emergency must be made, services dispatched and the location of the incident found and reached. In addition, the care givers are constantly having to make critical decisions about the type and extent of care to provide, both on the scene and at the hospital or trauma center.

This cluster focuses on the ITS services required to provide this emergency assistance. It includes both the provision of communications, the management of the emergency services fleets, and the transmission of critical information to better prepare the care givers, both at the scene and in the hospital or trauma center. Assisting the emergency vehicle in reaching the incident through vehicle routing, identification, and warning systems, is also an important aspect. A large number of this cluster's needs also deals with the coordination of different services and the need to share the critical and appropriate information on the emergency as rapidly as possible in real time.

Some of the advanced systems that may be explored and developed under this cluster are:

1. *Mayday systems* to alert dispatchers of location and nature and extent of a problem (e.g., crash, breakdown, etc.); and

2. *Advanced dispatching and vehicle-based response systems* (e.g., on emergency medical services & law enforcement vehicles, tow trucks, etc.) to get to the scene quickly, and provide

appropriate care (perhaps for the judicious enforcement of traffic laws as well).

Tourism and Traveler Information Services

This cluster focuses on the needs of a visitor or traveler that is unfamiliar with the rural area they are in or traveling through. It includes both information services and the unique aspects of providing mobility services to tourists and resorts, since many times visitors have little choice of mode (no auto) and require special services. It addresses aspects of both the ''Mobility and Convenience'' and ''Economic Vitality and Productivity'' goals for the ARTS program. Knowing where desired destinations are, how to get to them, and conditions along the way adds to the mobility and convenience of an area. Likewise, travelers must be aware of destinations before they can visit them and providing services to tourists and others unfamiliar with the rural surroundings enhances the economic vitality of the area.

The needs and services that may be bundled in this cluster include such activities as electronic yellow pages, weather and condition forecasting, route advisory information, information dissemination in hotels, roadside, wide band radio, etc. Once in a resort area, tourists often are hindered due to lack of a vehicle, or knowledge of the area. Providing mobility through transit, paratransit, and Global Positioning Systems (for rental cars) may also be an important function. This cluster would also be of primary interest to the Tourism and Visitors Centers, Economic Development Bureaus, as well as the local service providers (departments of street and traffic, transit authorities, State Department of Transportation, and Park Agencies).

Tourism may also be a concern in any rural setting during major events and festivals. At these events the traffic, local population, and transportation problems of the participants, local residents, and emergency services swell to many times their average levels. Event logistics, traffic and parking management, provision of emergency communications, etc., are crucial to the success of these events and yet must be temporary in nature, and in most cases understandable to volunteers.

Some of the advanced systems that may be explored and developed under this cluster are:

1. *Information services* (electronic yellow pages, route guidance, etc.) provided at fixed locations (e.g., in hotels, at rest areas, at modal transfer stations, etc.), and en-route;

2. *Mobility services* (transit, paratransit, parking systems, etc.);

3. *Smart card payment/transaction systems* for transit and tourist transactions; and

4. *Portable event management systems* that include such services as traffic management, variable message signs, hotel and service availability and directions on how to reach services when they are available.

Public Traveler Services/Public Mobility Services

Isolation and accessibility to key services are critical concerns to many rural inhabitants. Providing transit, paratransit, rural addressing, and other services associated with ability to make a desired trip fall within the Mobility Services cluster. As the nation ages, and becomes more transportation disadvantaged the need for Mobility Services and the safety net of accessibility will become more extreme. This is especially true for rural areas where neighbors are often miles apart, trip distances are long, and travel to common origins and destinations infrequent. All rural residents, visitors to tourist areas, and human service providers are constituents of this cluster.

The first major need associated with this cluster is finding those who need services and providing the mobility safety net to them. Secondly, determining how to provide the services in an efficient and effective manner, since often those providing the service have very high operating expenses. This includes the sharing of information among providers which can be used to help optimize routing, coordinate delivery, and reduce fraud in claiming subsidies from service providers. Lastly, addressing the need for coordination and communication between the many providers of services that may be involved including transit agencies and social service providers. The cluster includes not only providing mobility to the travelers from their homes and origins and destinations, but also increasing the ability of people to reach them in provision of other services (nursing, meals on wheels, hospital out patient, etc.).

Some of the advanced systems that may be explored and developed under this cluster are:

1. *Advanced transit, paratransit systems,* etc., using AVL and improved dispatching (e.g., taking advantage of improved rural addressing (i.e., using Global Positioning Satellites), etc.);

2. *Smart card payment/transaction systems* for rider payment and tracking (beat fraud); and

3. *Advanced ride sharing and ride matching systems.*

Infrastructure Operations and Maintenance

Due to the isolation, distances, and sheer amount of rural road miles the provision of infra-structure maintenance and operation services are both costly, and often inefficient. Low volumes on the roads make the detection of problems and conditions a concern. This cluster's focus is on improving the efficiency of the maintenance and operations activities for the transportation systems within rural areas. Improving and automating the highway pavement management systems, providing early detection and deployment of services to meet severe conditions (snow removal, salting, etc.), maintaining, operating, and linking local and statewide traffic operations centers, managing work zones are examples of the ITS elements that would fall in this cluster. It is closely related to the next cluster which focuses on the fleet operations in rural areas.

The maintenance of roads and the road system for safe operation falls under the maintenance organization activities. Because of the nature of rural settings, the cost per mile, and simply knowing the condition of the system that is out there, is very high and often inefficient. This cluster would focus on the provision of services to help maintenance organizations perform their functions more efficiently and safely. Pavement management, and normal road condition detection to reduce the costs of tracking and planning the system upkeep is critical. Some of the other needs and services that fall within this cluster include: Management of road crews and work zone location; road striping systems; weather information systems, detection of road conditions; coordination of maintenance activities; and flood control and detection.

Also general operations of the physical infrastructure has a set of needs that can be met by rural ITS. These include traffic management, traffic signal systems, tracking of use of the system, assisting in the safety and management of work zone areas, etc. This cluster would also focus on how the needs and desires of the operation managers of the road and other infrastructure systems can be provided for using ITS. Again, the overall focus would be to provide services to help reduce the costs of operations and maintenance activities and improve the performance and efficiency in rural settings.

Some of the advanced systems that may be explored and developed under this cluster are:

1. *Appropriate traffic signal and traffic management systems* for small urban areas, ultimately linked together (as well as with large metropolitan TMCs) as part of a statewide, distributed information system;

2. *Automated management systems* (e.g., bridge, pavement, roadside hardware, etc.); and

3. *Advanced work zone management and traffic control.*

Fleet Operations and Maintenance

The cost of providing services for mobility and managing the fleets used in rural settings is often extremely high for the same reasons as found in the last cluster. The distances are long, and the ability to combine destinations and provide efficient routing often poor. The potential for ITS to improve the coordination of fleets, routing, and communications is especially high in rural areas.

Fleet operations of both transit and other rural fleets has a different focus than infrastructure operations. The vehicles must be scheduled, routed, located, and maintained. Management of rural fleets takes on new significance due to the cost and low use per mile of operations. This cluster would focus on the coordination and provision of services for rural fleet operations and management. It includes services to transit operators and paratransit providers, as well as the fleets of maintenance and other areas. Vehicle location and routing, maintenance scheduling, rural addressing, coordination of services and billing between providers, etc. all would fall within this cluster.

Some of the advanced systems that may be explored and developed under this cluster are:

1. *Advanced dispatching and routing systems* (e.g., for snow plows, transit operators, etc.) (includes central processing systems and vehicle-based systems such as Automatic Vehicle Location);

2. *Advanced vehicle tracking systems* (e.g., guidance for snow plow operators to track through dangerous areas covered in snow); and

3. *Fleet maintenance and management systems.*

Commercial Vehicle Operations

Commercial Vehicle Operations (CVO) and ITS development and support is carried out through the parallel ITS CVO program under the direction of the FHWA Office of Motor Carriers. The Vision Statement for the ITS CVO program is stated as ''Assisted by technology, trucks and buses will move safely and freely throughout North America.'' It is a voluntary effort consisting of public and private organizations working together to improve highway safety and motor carrier productivity through the development and application of the CVO User Services (Commercial Vehicle Electronic Clearance, Automated Roadside Safety Inspections, On-board Safety Monitoring, Commercial Vehicle Administrative Processes, Hazardous Materials Incident Response, and Freight Mobility).

Since many of the activities associated with commercial vehicle operations take place in rural environments there are a number of topics and services of mutual interest between the Rural and CVO ITS programs. The rural ITS program focuses on the overall ITS services and general users found throughout rural America which may impact, but not be tailored to, CVO operations. Many of these, such as, emergency response and Mayday systems, may fall into other clusters. The Rural CVO cluster's primary function would be to provide a CVO perspective to these other clusters to ensure that CVO needs and requirements are also considered in the development of the overall ITS applications. The Rural CVO cluster may also supplement the main CVO ITS Program in uniquely rural commercial operations such as services to agricultural harvesting and migration operations or small rural commercial activities.

As stated, an important aspect of this cluster would be to ensure that systems designed to meet the other critical program areas also included the elements and perspectives of the commercial vehicle operators (collecting and tracking CVO specific data, monitoring and tracking specific vehicles, meeting unique CVO information needs, etc.). How can CVO operations take advantage of these clusters? Can CVO and general backbone systems be combined? What additional requirements are necessary to meet CVO needs? These are questions that may be addressed in fulfilling this aspect of the CVO cluster.

Another major component of this cluster centers around the agricultural harvesting and roundups found in rural areas. The annual migration of the harvesting combines in the Midwest, the sugar beet harvest in Minnesota, the roundups in ranch and sheep country, etc. all require focused transportation activities in often a very narrow window of opportunity. People need to know the location of the combines. Logistics and the movement of the trucks in and out of the area is critical; The road maintenance organizations may have special requirements before and after the event. All of these concerns point to a unique set of needs possibly overlooked under the provision of normal day-to-day services.

Some of the advanced systems that may be explored and developed under this cluster are:

1. *CVO-specific requirements/needs within the other critical program areas* (e.g., rural addressing, logistics, vehicle and driver monitoring), vehicle location systems for alerts to other travelers as well as for other tracking needs, assistance for agricultural harvesting, collecting and tracking CVO specific information needs (e.g., CVO-enhanced weather advisories);

2. *Services to assist Agricultural Harvesting and Migration;* and

3. *Other services in support of small rural commercial enterprises.* On the road communications and paging, low cost vehicle location for employees in the field, etc., to help make rural commercial activities more viable and cost-effective.

8. Next Steps: The Program Plan

This Strategic Plan for the ARTS program has described the vision, mission, objectives, and measures upon which the ARTS program is built. Because of the diversity of needs and settings in rural America, it also developed seven critical program areas, or clusters, which provide areas of common interest and focus within the overall program. The ARTS Program Plan has been defined using the Strategic Plan and its critical program areas as a foundation. Strategic Planning is also a continuing process. As the implementation of the program moves forward, a key element is the ongoing evaluation and adjustment of the plan to account for new knowledge gained by the early research, shifting priorities, etc. This ''Performance Feed Forward'' step of strategic planning will be carried out as part of each budget cycle.

As stated, the ARTS Program Plan will be developed around the clusters, or critical program areas. The tasks associated with the development of the Program Plan are underway and include:

1. Continue assessment and evaluation of current rural ITS projects;

2. Determine what is known and not known for each cluster;

3. Identify potential projects and costs associated with answering the unknowns within each cluster;

4. Set strategic priorities within and between each cluster;

5. Select projects (research, field operational tests, targeted model deployments) to reduce the unknowns within each cluster, meet the goals, objectives and strategic priorities, and stay within budget allocations for each fiscal year; and

6. Evaluate progress and update both the Strategic Plan and Program Plan during each budget cycle (Performance Feed Forward).

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 7, 1997.

Jane F. Garvey,

Acting Administrator, Federal Highway Administration.

[FR Doc. 97–6738 Filed 3–17–97; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board

[Docket No. AB–433X]

Idaho Northern & Pacific Railroad Company; Abandonment Exemption in Wallowa and Union Counties, OR

AGENCY: Surface Transportation Board—DOT.

ACTION: Notice of exemption.

SUMMARY: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated. The Board, under 49 U.S.C. 10505 exempts from the prior approval requirements of 49 U.S.C. 10903–04, the abandonment by Idaho Northern & Pacific Railroad Company of a 60.58-mile portion of its Joseph Branch line, in Wallowa and Union Counties, OR, subject to standard labor protective conditions and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective April 17, 1997. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by March 28, 1997; petitions to stay must be filed April 2, 1997; requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by April 7, 1997; and petitions to reopen must be filed by April 14, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to Docket No. AB–433X must be filed with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert A. Wimbish, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impared: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC News & Data, Inc., 1925 K Street, NW., Suite 210, Washington, DC 20006 [Telephone: (202) 289–4357]. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: March 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–6741 Filed 3–17–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 10, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1380.

Regulation ID Number: IA–17–90 (Final).

Type of Review: Extension.

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 37,644.

Estimated Burden Hours Per Respondent: 7 hours, 31 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 283,056 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 97–6791 Filed 3–17–97; 8:45 am]

BILLING CODE 4830–01–P

Office of the Comptroller of the Currency

[Docket No. 97–01]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Reopening of comment period.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is reopening the public comment period on the OCC's notice and request for comment regarding a request it has received for a preemption determination regarding certain provisions of the Rhode Island Financial Institution Insurance Sales Act.

DATES: Comments must be received by May 15, 1997.

ADDRESSES: Comments should be sent to the Communications Division, 250 E Street, SW, Third Floor, Washington, DC 20219. Attention Docket No. 97–01. In addition, comments may be sent by facsimile transmission to FAX number

(202) 874–5274 or by Internet mail to REGS.COMMENTS@OCC.TREAS.GOV. Comments will be available for inspection and photocopying at the E Street, SW, location. Appointments for inspection of comments can be made by calling (202) 874–4700.

FOR FURTHER INFORMATION CONTACT: Suzette Greco, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210 or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: The OCC has been asked to determine whether certain provisions of the Rhode Island Financial Institution Insurance Sales Act (FIISA), pertaining to sales of insurance by financial institutions, are preempted by provisions of Federal law. On January 14, 1997, the OCC sought comment on this request by notice published in the Federal Register (62 FR 1950). The deadline for submission of comments was February 13, 1997.

As the Federal Register notice and request for comment indicated, the Rhode Island law imposes a number of requirements upon financial institutions engaged in the solicitation and sale of insurance that differ from the requirements that apply to other insurance agents and agencies. The request for a preemption determination contends that these special requirements prevent or significantly interfere with the ability of a national bank to exercise its authority under 12 U.S.C. 92. *See Barnett Bank of Marion County, N.A.* v. *Bill Nelson, Florida Insurance Commissioner, et al.,* 116 S.Ct. 1103, 1109 (1996) (stating that state laws are applicable to national banks provided they do not ''prevent or significantly interfere'' with national banks' exercise of their powers).

Section 92 authorizes a national bank ''located and doing business in any place the population of which does not exceed five thousand * * * [to] act as the agent for any fire, life, or other insurance company,'' to ''solicit[] and sell[] insurance,'' to ''collec[t] premiums,'' and to ''receive for services so rendered * * * fees or commissions,'' subject to rules and regulations prescribed by the Comptroller of the Currency. The FIISA special requirements include a provision prohibiting banks from requiring or implying that the purchase of insurance products from a bank is related to receiving another banking product or service, a provision restricting where a bank's licensed agent can solicit the sale of insurance, a provision prohibiting certain bank employees from soliciting and selling insurance, a provision requiring separate applications for loans and insurance, and a provision limiting the ability of a bank to use its customer information to solicit and sell insurance.

The OCC is reopening the comment period until May 15, 1997, to allow interested parties the opportunity to consider the effect, if any, of a pending Rhode Island regulation that would implement the FIISA. On December 13, 1996, the Rhode Island Department of Business Regulation (DBR), Insurance Division, published notice of its proposal to promulgate Regulation 90, a rule that would apply to the sale of insurance by financial institutions in Rhode Island. Copies of the proposed regulation are on file at the DBR. Subsequently, on February 10, 1997, the DBR held a public hearing on proposed Regulation 90. The DBR has stated that it intends to file Regulation 90, as amended to reflect any changes from the proposed rule, with the Rhode Island Secretary of State in early April, 1997. The final regulation is expected to take effect in mid-1997.

In addition, the comments received to date on this matter raise certain points on which additional information would be helpful to the OCC. Specifically, the OCC invites commenters to address the following issues:

1. How would national banks have to change the way they conduct their insurance sales activities to conform to the provisions of the FIISA that are described in the January 14, 1997 Federal Register notice? Commenters should address with specificity any business or operational adjustments, and associated costs, involved in conforming their operations to the FIISA provisions.

2. The FIISA contains certain requirements intended to address the potential for customer confusion with regard to bank sales of insurance. What other approaches, including other formal mechanisms, are available to ensure that consumers are adequately protected?

3. Would any of the provisions of the FIISA described in the OCC's previous notice disproportionately impact community banks with respect to personnel or other costs?

4. To what extent would any of the FIISA provisions impact the ability of banks to use streamlined physical facilities which employ fewer staff and rely on technology to a greater extent than a traditional branch? To the extent there was any impact, how would customer convenience be affected? Would any of the provisions have a detrimental affect on convenient availability of a full line of products to customers?

5. Banks operating in low-income areas increasingly are seeking to develop more efficient, low-overhead facilities and delivery systems when providing products and services in these areas. Would compliance with any provisions of the FIISA result in operating costs and burdens that would deter banks from providing insurance in low-income areas and thereby lessen access to a full line of financial products and services in low-income communities?

6. What effect do recent amendments to the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, have on the FIISA provisions limiting the ability of a bank to use its customer information to solicit and sell insurance? The OCC welcomes comments on these issues and on any aspect of the FIISA on which the OCC has been asked to consider preemption.

Dated: March 11, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–6708 Filed 3–17–97; 8:45 am]

BILLING CODE 4810–33–P

Customs Service

Proposed Collection; Comment Request; Certificate of Registration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Registration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on

proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Certificate of Registration.

OMB Number: 1515–0014.

Form Number: Customs Forms 4455 and 4457.

Abstract: The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles which are taken abroad. There articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, travelers.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 10, 1997.

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6722 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration of Free Entry of Returned American Products (Customs Form 3311)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Free entry of Returned American Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Free entry of Returned American Products

OMB Number: 1515–0043

Form Number: Customs Form 3311

Abstract: This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning American products.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals,

Estimated Number of Respondents: 12,000

Estimated Time Per Respondent: 6 minutes

Estimated Total Annual Burden Hours: 51,000

Estimated Total Annualized Cost on the Public: $198,000.

Dated: March 10, 1997

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6723 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Protest

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Protest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information

collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Protest.

OMB Number: 1515–0056.

Form Number: Customs Form 19.

Abstract: This collection is used by an importer, filer, or any party at interest to petition the Customs Service, or Protest, any action or charge, made by the port director on or against any; imported merchandise, merchandise excluded from entry, or merchandise entered into or withdrawn from a Customs bonded warehouse.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 3,750.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 41,250.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 11, 1997.

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6724 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Crew Members Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew Members Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew Members Declaration.

OMB Number: 1515–0063.

Form Number: Customs Form 5129.

Abstract: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 5,968,351.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 298,418.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 12, 1997.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 97–6725 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Foreign Assembler's Declaration (With Endorsement by Importer)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Assembler's Declaration (with Endorsement by Importer). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub.L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1515–0088.

Form Number: N/A.

Abstract: The Foreign Assembler's Declaration with Importer's Endorsement is used by Customs to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the U.S.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Estimated Number of Respondents: 2,730.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 302,402.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 11, 1997.

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6726 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Free Admittance Under Conditions of Emergency

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Free Admittance Under Conditions of Emergency. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Free Admittance Under Conditions of Emergency.

OMB Number: 1515–0130.

Form Number: N/A.

Abstract: This collection of information will be used in the event of emergency or catastrophic event to monitor goods temporarily admitted for the purpose of rescue or relief.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Nonprofit Assistance Organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 11, 1997.

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6727 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

CUSTOMS SERVICE

Proposed Collection; Comment Request; Harbor Maintenance Fee

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Harbor Maintenance Fee. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Harbor Maintenance Fee.

OMB Number: 1515–0158.

Form Number: Customs Forms 349 and 350.

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 18,095.

Estimated Time Per Respondent: 26 minutes.

Estimated Total Annual Burden Hours: 32,245.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 11, 1997.

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6728 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Customs Service

Proposed Collection; Comment Request; Electronic Entry Filing

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Electronic Entry Filing. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Electronic Entry Filing.

OMB Number: 1515–0174.

Form Number: N/A.

Abstract: The Electronic Entry Filing Regulations define the requirements for qualified Brokers, Importers, and Service Bureaus to file electronically through the Automated Broker Interface (ABI) entry and entry summary data.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 14 million.

Estimated Time Per Respondent: 1 second.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 11, 1997.

J. Edgar Nichols,

Information Services Group.

[FR Doc. 97–6729 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Importers ID Input Record

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importers ID Input Record. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 19, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide

information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers ID Input Record.

OMB Number: 1515–0191.

Form Number: Customs Form 5106.

Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses/ Institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 12, 1997.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 97–6730 Filed 3–17–97; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Tuesday
March 18, 1997

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of Class D Airspace South of Abbotsford, British Columbia (BC), on the United States Side of the U.S./Canadian Border, and the Proposed Establishment of a Class C Airspace Area in the Vicinity of Point Roberts, Washington (WA); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–16]

RIN 2120–AA66

Proposed Modification of Class D Airspace South of Abbotsford, British Columbia (BC), on the United States Side of the U.S./Canadian Border, and the Proposed Establishment of a Class C Airspace Area in the Vicinity of Point Roberts, Washington (WA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class C airspace area in the United States (U.S.) in the vicinity of Point Roberts, Washington, with a ceiling of 12,500 feet mean sea level (MSL) and a floor of 2,500 feet MSL. In addition, this notice proposes to extend the existing Abbotsford Class D airspace area, into airspace which is currently Class E airspace, and lower the ceiling from 3,000 to 2,500 feet MSL in U.S. airspace southwest of the Abbotsford Airport along the U.S./Canadian border. The FAA is proposing these actions to assist Transport Canada's efforts to reduce the risk of midair collision, enhance safety, and improve air traffic flows within the Vancouver and Abbotsford, BC, International Airport areas.

DATES: Comments must be received on or before May 2, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 93–AWA–16, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

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. 93–AWA–16.'' 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 Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. 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.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the air traffic control (ATC) system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated Airport Radar Service Area (ARSA), was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2.1, ''Replace Terminal Radar Service Areas with Model B Airspace and Service'' in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system.

The FAA has established ARSA's at 121 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's that warrant implementation of an ARSA. Airspace Reclassification, effective September 16, 1993, reclassified ARSA's as Class C airspace areas. This change in

terminology is reflected in the remainder of this NPRM.

This notice proposes Class C airspace designation at locations which were not identified as candidates for Class C in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

This proposal would affect airspace currently served by the Vancouver and Abbotsford air traffic facilities in the vicinity of Point Roberts, WA, along the Canadian border. Vancouver and Abbotsford Airports are both international and public-use airports located in Canada. The U.S. airspace subject to the provisions of this proposal is currently designated as a Class E airspace area. Passenger enplanements reported at the Vancouver in 1995 was 312,000, up from 301,000 in 1994. This volume of passenger enplanements and aircraft operations meets the FAA criteria for establishing Class C airspace to enhance safety.

Pre-NPRM Public Input

As announced in the Federal Register on March 22, 1995 (60 FR 15172), two pre-NPRM airspace meetings were held on May 9–10, 1995, in Friday Harbor and Bellingham, WA. The purpose of these meetings was to provide local airspace users with an opportunity to present input on the Transport Canada proposal prior to initiating any regulatory action. In the ensuing comment period, which closed on July 10, 1995, over 300 comments were received in overwhelming opposition to the proposal. The majority of this opposition centered around the significant amount of airspace required for the original proposal. The original proposal would have required the reclassification of airspace in five contiguous areas from Abbotsford Airport, across Bellingham Airport, to a point south of San Juan Island. As a result, subsequent meetings were held between Transport Canada, FAA, and general aviation groups to mitigate these concerns. These meetings resulted in an agreement to revise Transport Canada's July 1994 proposal. Of the original five airspace areas, only three would be recommended for inclusion in the revised proposal. This revision significantly reduced the amount of Class C airspace required.

On April 5, 1996, the FAA published a Notice of Public Meeting (61 FR 15331), to announce another informal airspace meeting to solicit comments from airspace users, and others, regarding Transport Canada's revised proposal. Since only three areas were retained in the Transport Canada revised proposal request, only those comments pertaining to these areas were considered and incorporated in this NPRM and are summarized below.

Analysis of Comments

Comments Summary

The FAA agrees with the majority of the commenters that the significant amount of airspace to be reclassified in the original proposal was not in the best interest of the aviation community. The FAA recognizes that flight safety is the paramount concern, and agrees that a lesser amount of airspace could meet the needs of Transport Canada's flight safety concerns. In coordination with aviation groups and Transport Canada, the original proposal was modified. The modified proposal redefines the U.S. airspace west and southwest of Point Roberts, WA, within a 16-nautical-mile (NM) arc of the Vancouver Very High Frequency Omnidirectional Range (VOR), from above 2,500 feet to 12,500 feet MSL. This area would in effect designate a wedge of U.S airspace between Vancouver and Victoria as Class C airspace. Redefining this area with reference to the Vancouver VOR would make the proposed area easily navigable by aircraft transiting the proposed area. The proposed Class C and the modified Class D airspace areas in this proposal are immediately south of the U.S./Canadian border on the instrument approach to Abbotsford Airport. This proposal would reduce the potential for near midair collisions between instrument flight rules (IFR) and unknown visual flight rules (VFR) aircraft engaged in north-south border crossings in U.S. airspace controlled by NAV-Canada. In addition, the extension of the Abbotsford Class D airspace area, with the overlay of Class C airspace, would provide protection for aircraft engaged in flight training from unidentified VFR aircraft.

Comments

One commenter stated that Area 1 [referred to in this document as the wedge of airspace located southwest of Point Roberts, WA] is larger than it needs to be. The commenter suggested that the eastern border should be moved west about 2 miles to lessen the impact on Point Roberts, and thereby conform more to the traffic needs that exist.

Another commenter stated that Area 2 [U.S. airspace south and east of Point Roberts] makes it easy for Transport Canada to design traffic flow patterns into and out of Vancouver International Airport. In addition, this commenter stated that increased traffic flow would lead to expanded approaches and departures at Vancouver. This commenter's concern is that the resulting increase in air traffic will be rerouted into U.S. airspace instead of Canadian airspace. This commenter suggested that the proposed airspace redesignations are unnecessary because Transport Canada has sufficient airspace within Canadian territory to accommodate its safety concerns.

The FAA does not agree, and further believes that safety will be enhanced by removing the gap in the Vancouver terminal control area, by reducing the potential for conflicts between IFR and VFR aircraft.

One commenter stated that the reason Transport Canada has requested increased control of U.S. airspace is because Abbotsford Airport's role as an instrument flight training facility has caused a significant increase in air traffic. The commenter recommends relocating the Abbotsford approach procedure turn to the north side of the approach course. According to the commenter, this would place the protected airspace for the procedure turn in Canadian territory. The commenter believes that this modification would remove the perceived encroachment on Blaine Airport, WA.

The FAA does not agree. The heavy volume of instrument flight training being conducted in the Abbotsford area, coupled with north-south border crossings, requires the modification of the existing airspace. Further, the FAA believes that if the procedure turn was moved north, Abbotsford's protected airspace could conflict with Langley, BC, Airport's control zone. Finally, the FAA does not believe that the proposed modification would result in an encroachment on Blaine Airport. The ceiling of the proposed Class D airspace is 1,500 feet MSL and would not interfere with operations at the Blaine Airport because the traffic pattern altitude is 900 feet MSL.

Noise Comment

One commenter stated that Transport Canada did not provide an environmental impact statement for actions that would impact an environmentally sensitive area. This commenter believes that VFR pilots operating in the subject airspace areas would avoid contacting the controlling agency by operating at lower altitudes and thereby creating unnecessary noise and reducing safety. The commenter also believes that if U.S. airspace is modified, Transport Canada may be inclined to route arrivals/departures of large jet aircraft through this area. This influx in traffic could result in increased

noise levels which would reduce property values. Another perceived drawback could be reduced safety for local aircraft operators.

The FAA is not required to conduct environmental assessments for certain airspace actions. FAA Order, 1050.1D, on ''Policies and Procedures for Considering Environmental Impacts,'' implements the National Environmental Policy Act of 1969. This Order establishes FAA policies and procedures for the preparation of Environmental Impact Statements and for preparing and processing environmental assessments of FAA actions. FAA Order 1050.1D provides that the establishment of Class C or D airspace is categorically excluded from the environmental process.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to redesignate existing Class E airspace to Class C airspace in the area of Point Roberts, WA, and to extend the existing Class D airspace at Abbotsford, BC. The proposed Class C airspace designation applies to an area lying within U.S. airspace along the U.S./Canadian border. This notice addresses only that airspace contained within the U.S.

The FAA adopted the NAR Task Group recommendation that each Class C airspace area conform to a standard airspace configuration, insofar as is practicable. The standard Class C airspace area consists of that airspace within 5 NM of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 NM from the primary airport from l,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

The Class C airspace configuration proffered in this proposal does not conform to the standard Class C airspace dimensions. In this case, the outer ring of the Vancouver Airport Class C airspace area is established at 16 NM from the Vancouver VOR, as opposed to the standard 10 NM. The altitudes would extend from above 2,500 feet to 12,500 feet MSL. This wedge of U.S. airspace would consequently abut Canadian airspace and eliminate the gap between the Vancouver terminal control area and the Victoria Class C airspace area as they presently exist.

This proposal would also establish Class C airspace and extend the existing Class D airspace areas at Abbotsford Airport. Both proposed airspace areas would be located immediately south of the international border on the instrument approach west of Abbotsford Airport. The airspace presently designated as Class E would become Class C, and would adjoin the existing Vancouver Class C airspace. This airspace would extend from 2,500 feet to 12,500 feet MSL. The existing Class D airspace at Abbotsford would be extended approximately 7 NM to the west. The proposed Class C airspace area would be established directly above the modified Class D airspace. Since the proposed Class C floor is at 2,500 feet MSL, the existing Class D airspace ceiling would be lowered from 3,000 feet to 2,500 feet MSL. This proposed action would provide protection to aircraft conducting procedure turns during instrument approaches to Abbotsford Airport from aircraft traversing the U.S./Canadian border in a north-south direction.

Definitions and operating requirements applicable to Class C airspace may be found in section 71.51 of part 71 and sections 91.1 and 91.130 of part 91 of the Federal Aviation Regulations (14 CFR parts 71, 91), effective September 16, 1993. The coordinates for this airspace docket are based on North American Datum 83. Class C and Class D airspace designations are published, respectively, in paragraphs 4000 and 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class C and Class D airspace designations listed in this document would be published subsequently in the Order.

Statistics provided by Transport Canada meet U.S. criteria for the designation of Class C airspace provided in FAA Order 7400.2D, ''Procedures for Handling Airspace Matters.'' Documented air traffic activity for 1994, which combines air carrier, military and general aviation, exceeded 200,000 annual operations. See FAA Order 7400.2D, paragraph 26–20(a).

International Agreements

In accordance with international agreements, the FAA reviews and considers proposals from neighboring countries to enhance the safety of aircraft operations in the vicinity of international borders. It is not unusual for a neighboring country to provide air traffic services in the adjacent country's airspace. Establishing such services by agreement works to the benefit of both countries.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on small entities changes on international trade. In conducting these analyses, the FAA has determined that this NPRM: (1) Would generate benefits that justify its minimal costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) would not be significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

Cost-Benefits Analysis

The FAA has determined that the proposed establishment of Class C and modification of Class D airspace areas in the vicinity of Vancouver and Abbotsford, BC, would result in minimal, if any, cost to either the agency or aircraft operators.

Costs

The FAA has determined the proposed establishment of Class C and modification of Class D airspace areas in the vicinity of Vancouver and Abbotsford, BC, would impose minimal cost, if any, to either aircraft operators or the FAA. Those potential cost components (navigational equipment for aircraft operators and operations support equipment for the FAA, including additional cost for air traffic controllers) that could be imposed by the proposed rule are discussed as follows:

Cost Impact on Aircraft Operators

Establishment of Class C Airspace

Aircraft operators would incur minimal, if any, additional costs by complying with the proposed rule. This

assessment is based on the most recent General Aviation and Avionics Survey Report. The Report indicates an estimated 82 percent of all general aviation (GA) aircraft operators are already equipped with the necessary equipment required to operate in a Class C airspace area (i.e., two-way radios and Mode C transponders). Moreover, the FAA has traditionally accommodated GA aircraft operators without two-way radio communication, via letters of agreement, whenever possible without jeopardizing safety. Further, the FAA has determined there would be minimal cost to GA operators, who would utilize circumnavigation procedures to avoid the proposed Class C and Class D airspace area, or who could fly beneath the 2,500 feet MSL floor. Therefore, the FAA has determined that the proposed rule would impose minimal, if any, additional cost impact on circumnavigating operators.

Modification of Class D Airspace

Aircraft operators would incur minimal, if any, costs with compliance from the proposed rule. This assessment is based on the most recent General Aviation and Avionics Survey Report. The Report indicates an estimated 85 percent of all GA aircraft operators are already equipped with the necessary equipment to operate in a Class D airspace area (i.e., two-way radios). The FAA has determined that nonparticipating operators would be able to circumnavigate the Class D airspace area, by altering their current flight paths between 2 and 7 NM, to avoid the new airspace. Therefore, the FAA has determined for the aforementioned reasons, that the proposed rule would impose minimal, if any, cost impact on nonparticipating aircraft operators.

Cost Impact on the FAA

A letter of agreement between the FAA and Transport Canada, signed on May 1, 1995, establishes standard procedures for coordinating air traffic operations between Seattle Air Route Traffic Control Center and Vancouver Air Control Centre. The Letter of Agreement also establishes the ATC responsibilities for each of the centers. The U.S. has relinquished control of the proposed Class C and Class D airspace areas to Canada. Transport Canada already provides radar service for the additional 10 NM radar area that the proposed rule would establish. In addition, Transport Canada currently provides VFR Advisory service for the proposed modified Class D airspace area.

The FAA would not incur any additional charting and pilot education expenses as a result of the modifications incurred from the proposed rule. The FAA currently revises sectional charts every six months. Changes of these types are required and made routinely to depict Class C and Class D airspace areas during these cycles, and are considered an ordinary operating cost. Further, pilots would not incur any additional costs obtaining current charts depicting Class C and Class D airspace areas because they should be using only the most current charts.

In order to advise the public of proposed changes to airspace areas, the FAA holds informal public meetings at each location where Class C establishments or modifications are proposed. These meetings provide pilots with the best opportunity to learn about Class C airspace operating procedures in the proposed areas. The routine expenses associated with these public meetings are incurred regardless of whether Class C is ultimately established. If either of the proposed airspace changes occur, the FAA would distribute a ''Letter to Airmen'' to all pilots residing within 50 miles of the Class C airspace site that would explain modifications to aircraft operation and airspace configuration. In addition, FAA district offices conduct aviation safety seminars on a regular basis. These seminars are provided by the FAA to discuss a variety of aviation safety issues, including Class C airspace areas. The one-time incurred cost of the ''Letter to Airmen'' would be $535 (1995 dollars). This one-time negligible cost would be incurred upon the establishment of the proposed Class C airspace.

Benefits

The FAA has determined the proposed establishment of Class C and modification of Class D airspace areas would promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area. The FAA estimates that the total number of operations at Vancouver International Airport in 1995 was 312,000, up from 301,000 in 1994, and these estimates are projected to increase to 347,000 by the year 2000. Also, passenger enplanements were estimated at 12.2 million in 1995, up from 11.1 million in 1994, and these estimates are projected to increase to 14.8 million by the year 2000. In view of the increases in passenger enplanements and aircraft operations, the FAA has concluded that the proposed rule would enhance aviation safety.

Impact on Aviation Safety

The proposed rule would enhance aviation safety by imposing equipment (i.e., two-way radios and Mode C transponders) on aircraft operators, while providing services such as (i.e., separation procedures and safety alerts) in the proposed Class C airspace. Imposing these equipment and operational requirements for the proposed establishment of Class C airspace and expansion of Class D airspace in the vicinity of Vancouver, BC, would reduce the risk of midair collisions between aircraft operating on IFR and aircraft operating in accordance with VFR in that airspace area. This determination is based on the FAA's expertise in airspace management, but has not been quantified for this proposal in light of the minimum cost involved.

Impact on Operational Efficiency

Under the proposed rule, Transport Canada would provide aircraft operators operational services such as traffic advisories, separation and sequencing of arrivals, when transiting the subject airspace. As a result of the proposed rule, aircraft operators would obtain services provided by Transport Canada.

Conclusion

In view of the minimal, if any, cost of compliance and the benefits of enhanced aviation safety and increased operational efficiency, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by

Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The small entities that potentially may incur minimal, if any, cost with the implementation of the proposed rule are operators of aircraft who do not meet Class C or Class D navigational equipment standards. But the small entities potentially impacted by the proposed rule (primarily parts 121 and 135 aircraft without two-way radios and Mode C transponders) would not incur any additional cost for navigational equipment or the more stringent operating procedures because they routinely fly into airspace where those requirements are already in place. As

the result of the previously implemented ''Mode C rule,'' all of these commercial operators are assumed to have Mode C transponders. In addition, the FAA has traditionally accommodated GA aircraft operators without two-way radio communication equipment when it was possible to do so without jeopardizing safety, via letters of agreement. Therefore, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. This assessment is based on the fact that the proposed rule would not impose costs on aircraft operators or aircraft manufacturers (U.S. or foreign).

Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This NPRM does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANM BC C Vancouver, BC [New]

Vancouver International Airport, BC, Canada
(Lat. 49°11′38″ N, long. 123°11′04″ W)
Vancouver VORTAC
(Lat. 49°04′38″ N, long. 123°08′57″ W)

That airspace extending upward from 2,500 feet MSL to 12,500 feet MSL beginning at lat. 49°00′00″ N, long. 123°19′20″ W; thence east along the U.S./Canadian boundary to lat. 49°00′08″ N, 122°33′50″ W; thence south to lat. 48°57′59″ N, long. 122°33′50″ W; thence west to lat. 48°57′59″ N, long. 122°47′12″ W; thence southwestward via a 16 NM arc of the Vancouver VORTAC to lat. 48°49′52″ N, long. 123°00′31″ W; thence northwest along the U.S./Canadian boundary to the point of beginning.

* * * * *

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ANM BC D Abbotsford, BC [Revised]

Abbotsford Airport, BC, Canada
(Lat. 49°01′31″ N, long. 122°21′48″ W)
Vancouver VORTAC
(Lat. 49°04′38″ N, long. 123°08′57″ W)

That airspace extending upward from the surface to 2,500 feet MSL beginning at lat. 48°57′59″ N, long. 122°18′57″ W, thence counterclockwise along the 4-mile radius of the Abbotsford Airport to lat. 49°00′05″ N, 122°16′08″ W; thence west along the US-Canadian border to lat. 49°00′05″ N, long. 122°45′58″ W, thence clockwise along the 16-mile ARC of the Vancouver VORTAC, to lat. 48°57′59″ N, long. 122°47′12″ W; thence east along lat. 48° 57′59″ N to the point of beginning; excluding the airspace within the Vancouver, BC, Class C airspace and the airspace west of long. 122°33′50″ W below 1,500 feet MSL.

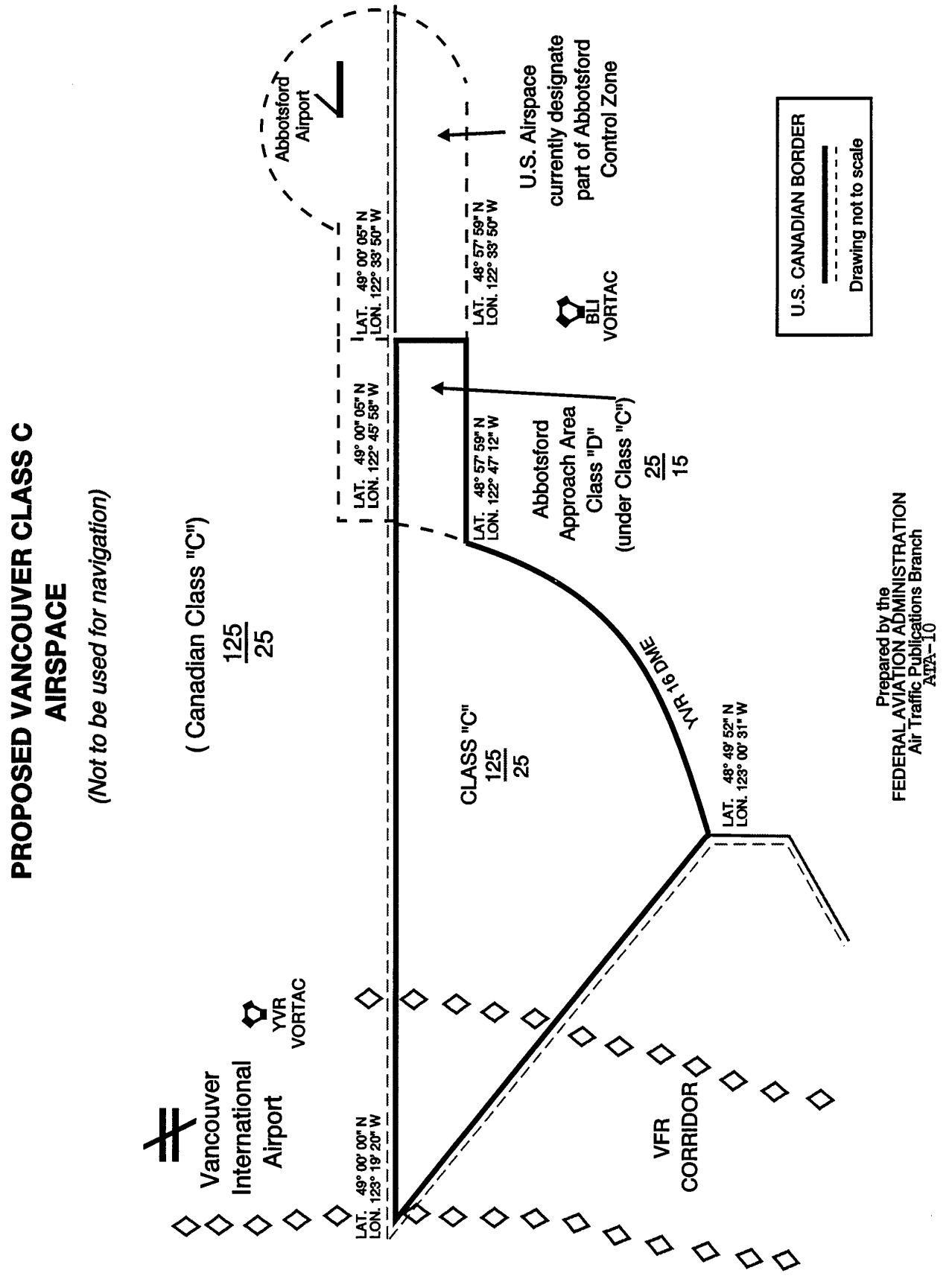
* * * * *

Issued in Washington, DC, on March 10, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P



[FR Doc. 97–6685 Filed 3–17–97; 8:45 am]
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Federal Register

Tuesday
March 18, 1997

Part III

Environmental Protection Agency

Allotment of Drinking Water State Revolving Fund Monies; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5708–2]

Allotment of Drinking Water State Revolving Fund Monies; Notice

AGENCY: Environmental Protection Agency.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its decision on allotment of Drinking Water State Revolving Fund (DWSRF) monies to States. For fiscal year 1997, funds will be allotted based on the formula used to distribute public water systems supervision grants in fiscal year 1995. For fiscal year 1998 and subsequent fiscal years, funds will be allotted based on each State's proportional share of the total eligible needs for the States, derived from the Drinking Water Infrastructure Needs Survey: First Report to Congress. Each State will be allotted at least one percent of the funds available to the States.

Introduction

The DWSRF program was established by the reauthorized Safe Drinking Water Act (SDWA), signed by President Clinton on August 6, 1996. The SDWA authorizes $9.599 billion for the DWSRF program through FY 2003. For FY 1997, EPA's budget includes $1.275 billion for the DWSRF program. EPA's Office of Water is the national program manager for the SDWA, including the DWSRF program. As intended by Congress, the DWSRF program will be implemented largely by the States.

Fiscal Year 1997

Funds available for allotment to States in FY 1997 will be allotted based on the formula used to distribute public water system supervision grant funds in FY 1995 (SDWA Section 1452(a)(1)(D)(i)). In accordance with the law, each State, including the District of Columbia, will be allotted at least one percent of the funds available for allotment to all the States. The law also requires that the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam together receive an allotment not to exceed 0.33 percent of the total funds available for allotment. The formula results are shown below for each State in dollar terms as well as in percentages of the funds available to the States. Allotment amounts are rounded to the nearest one hundred dollars. Under the law, the funds available for allotment to the States are determined by deducting national set-asides from the total DWSRF appropriation. In fiscal year 1997, this means that the one and one half percent set-aside for Native Americans, which totals $19,125,000, is removed from the total appropriation to calculate the level of funds available to the States. In fiscal year 1997, $1,255,875,000 is the level of funds available to the States.

Fiscal Year 1997 DWSRF Final Allotment Results

Alabama $12,558,800 (1.00%);
Alaska $ 27,039,000 (2.15%);
Arizona $16,938,300 (1.35%);
Arkansas $12,558,800 (1.00%);
California $75,682,600 (6.03%);
Colorado $16,784,100 (1.34%);
Connecticut $21,408,200 (1.70%);
Delaware $12,558,800 (1.00%);
District of Columbia $12,558,800 (1.00%);
Florida $45,132,600 (3.59%);
Georgia $25,775,000 (2.05%);
Hawaii $12,558,800 (1.00%);
Idaho $14,157,800 (1.13%);
Illinois $38,502,400 (3.07%);
Indiana $25,712,100 (2.05%);
Iowa $16,857,300 (1.34%);
Kansas $14,095,000 (1.12%);
Kentucky $12,558,800 (1.00%);
Louisiana $20,420,300 (1.63%);
Maine $12,653,200 (1.01%);
Maryland $17,640,900 (1.40%);
Massachusetts $14,344,600 (1.14%);
Michigan $59,681,100 (4.75%);
Minnesota $42,086,000 (3.35%);
Mississippi $16,474,200 (1.31%);
Missouri $21,857,600 (1.74%);
Montana $14,826,200 (1.18%);
Nebraska $12,824,000 (1.02%);
Nevada $12,558,800 (1.00%);
New Hampshire $13,754,800 (1.10%);
New Jersey $27,947,300 (2.23%);
New Mexico $12,759,800 (1.02%);
New York $59,167,700 (4.71%);
North Carolina $46,114,100 (3.67%);
North Dakota $12,558,800 (1.00%);
Ohio $43,073,000 (3.43%);
Oklahoma $17,561,900 (1.40%);
Oregon $18,920,500 (1.51%);
Pennsylvania $53,270,700 (4.24%);
Puerto Rico $12,558,800 (1.00%);
Rhode Island $12,558,800 (1.00%);
South Carolina $14,821,600 (1.18%);
South Dakota $12,558,800 (1.00%);
Tennessee $12,776,200 (1.02%);
Texas $70,153,800 (5.59%);
Utah $12,558,800 (1.00%);
Vermont $12,558,800 (1.00%);
Virginia $29,442,400 (2.34%);
Washington $31,145,900 (2.48%);
West Virginia $12,558,800 (1.00%);
Wisconsin $41,546,400 (3.31%);
Wyoming $12,558,800 (1.00%);
Other Areas [1] $4,144,400 (0.33%)

Fiscal Year 1998 and Subsequent Fiscal Years

Under SDWA Section 1452(a)(1)(D)(ii), Congress has directed that capitalization grants for FY 1998 and subsequent years be allotted among States based on each State's proportional share of the State needs identified in the most recent Drinking Water Needs Survey, provided that each State be allotted a minimum share of one percent of the funds available for allotment to all the States. The first Drinking Water Needs Survey was conducted over the last two years with the cooperation of every State. The results of the Survey were presented to Congress on January 29, 1997.

Options Presented for Public Comment

On October 31, 1996, EPA solicited public comment on six options for using the results of the Drinking Water Needs Survey to allocate DWSRF monies among States (61 FR 56231). The options presented in that Federal Register notice are summarized below. All of the options discussed below assume that each State, and the District of Columbia, will be allotted a minimum share of one percent of the funds available for allotment to all the States, as required by law. All of the options also assume, as required by law, that the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam, will together receive an allotment not to exceed 0.33 percent of the funds available for allotment to the States. The funds available for allotment to the States will be the level of funds appropriated by Congress, less the national set-asides, which include funds reserved for Indian Tribes and Alaska Native water systems. This framework was specified by Congress in the 1996 amendments to the SDWA (Section 1452).

- Option 1 was a formula that would allocate DWSRF monies to States based on each State's share of the total need. Total need is the capital infrastructure need faced by publicly and privately owned community water systems nationwide. Total need includes both current and future needs for the 20-year period from January 1995 through December 2014. This option was the one most favored by commenters, and was selected by EPA, with some modifications, as the basis for the allotment formula. As discussed below, total eligible need is the basis for allocation of DWSRF monies.
- Option 2 was a formula based on each State's share of Current Need. Current Need is identified as all infrastructure improvement projects needed now to protect public health.
- Option 3 was a formula based on Current SDWA Need, which represents capital improvement projects needed

[1] Other Areas include: the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

now to ensure compliance with existing SDWA regulations. Current SDWA Need does not include distribution need tied to the Total Coliform Rule (TCR).

- Option 4 was a formula based on Total SDWA Need. This component of need includes Current SDWA Need and Future SDWA Need. Future SDWA need includes projects needed over the next 20 years for compliance with existing regulations, as well as for the proposed Disinfectants and Disinfection Byproducts and Enhanced Surface Water Treatment Rules. Total SDWA Need does not include distribution need tied to the TCR.

EPA also solicited comments on hybrid options that would take advantage of the strengths of different options and/or address concerns for meeting the needs of small systems. EPA presented two such options in its request for comments:

- Option 5 was a hybrid of Current Need and Current SDWA Need (e.g., 50% of the formula based on a State's share of Current Need, with the other 50% based on Current SDWA Need). Such an approach would combine the benefits of formulas based on both types of need. The Current SDWA Need component would place emphasis on the projects required now for compliance with regulations, while the Current Need component would take into account all projects needed now—including current distribution need associated with the TCR.
- Option 6 was a hybrid formula emphasizing the needs of small systems (e.g., basing 50% on total need and 50% on small system need). Giving added weight to small system need would acknowledge the special problems of small systems. Small water systems have both a higher per-household need and more trouble in maintaining compliance with drinking water regulations than larger systems.

In addition to comments on these hybrid options, EPA requested suggestions for other hybrid options. EPA also requested comment on the percentages to employ in any hybrid. EPA requested that commenters suggesting alternative hybrids or other options not included in the Federal Register notice keep those options within the scope of the law. The law requires that funds be allotted to States based on each State's proportional share of the State needs identified in the most recent Drinking Water Needs Survey.

Summary of Comments

EPA received 23 responses to its request for comments. These commenters included the following:

- 12 State representatives.[2]
- 6 regional or city water agencies.
- 5 associations.

Almost three-fourths of the commenters (15) favored Option 1, total need, as their first choice. In addition, 6 commenters supported the total need option as either their second choice, or as the most significant factor in a hybrid formula. Thus, 21 of the 23 commenters supported use of total need in some significant manner. The other options that received support were: Option 2, Current Need (1 commenter); Option 6, Total or SDWA Need with an emphasis on small systems need (5 commenters); and two allotment formula options not presented in the request for comments (2 commenters). A summary of comments appears below.

Comments Favoring Total Need

As stated above, the majority of comments supported Option 1, total need. Commenters from all but one State favored this option, and all State representatives participating in the October 14, 1996, meeting of the Association of State Drinking Water Administrators favored this option.

Commenters in favor of total need argued that this option is most consistent with the intent of SDWA. They noted that total need was the bottom-line of the Drinking Water Needs Survey. Section 1452(a)(1)(D) of the SDWA requires that DWSRF monies for fiscal year 1998 and following years be allotted to States based on each State's proportional share of the State needs identified in the most recent Drinking Water Infrastructure Needs Survey. These commenters interpreted this provision to mean the bottom line total need in the survey. Additionally, statistical precision associated with total need is the highest.

According to the commenters, this approach appropriately provides States with flexibility to determine which needs are critical for protecting public health, does not put States with the most active SDWA compliance programs at a disadvantage, includes distribution system needs associated with the TCR, and encourages proactive health protection. In addition, these commenters noted that many of the projects identified as future needs when the information was collected, are now or will become current needs during the lifetime of this formula.

EPA is persuaded by the arguments of the commenters that supported Option 1, total need. The Agency feels that this approach recognizes the differences in need among States and gives the maximum degree of flexibility. The Agency will allot funds to each State based on the State's proportional share of total eligible needs reported for the most recent Drinking Water Needs Survey conducted under SDWA Section 1452(h). Each State shall be allocated a minimum of one percent of the funds available to States, as required under SDWA Section 1452(a)(1)(D)(ii). Once funds have been allotted, States must then choose projects for funding based on the criteria in the law. The law requires that State Intended Use Plans, to the maximum extent practicable, give priority for funding to projects that address the most serious risk to human health, are necessary to ensure compliance with SDWA requirements (including filtration), and assist systems most in need on a per household basis, according to State affordability criteria.

Total eligible need for the purpose of the allotment formula will include most but not all types of need under the category of total need reported for the Drinking Water Infrastructure Needs Survey: First Report to Congress. Total eligible need for the allotment formula (or total eligible need) will not contain projects that are ineligible for DWSRF funding. Projects not eligible for funding that are included in the Drinking Water Infrastructure Needs Survey: First Report to Congress are new and improved dams and reservoirs. These ineligible projects total just over three percent of the total need identified in the *Drinking Water Infrastructure Needs Survey: First Report to Congress.*

Comments Favoring Current Need

One commenter provided an argument against Option 1, total need, stating that it would require public water systems or States to project future needs, which depend on a variety of factors. For this reason, the commenter advocated Option 2, Current Need. However, EPA notes that the Drinking Water Needs Survey included only well-documented future needs that affect the current population and are very likely to be implemented. Furthermore, the Agency notes that most future needs are no more than five years away, because systems generally plan only five years in advance. Consequently, EPA believes that basing the allotment formula upon total needs will not result in an unfair distribution of funds.

Comments Favoring Small System Need

In addition to the commenters that favored total need and the one commenter that favored Current Need, five commenters favored a hybrid

[2] The State of Alaska Department of Environmental Conservation submitted two separate responses.

option that emphasizes small system needs. Four commenters advocated a hybrid of total need and total need for small systems, and one commenter advocated a hybrid of Total SDWA Need and Total SDWA Need for small systems.

One commenter supported a hybrid option emphasizing small system needs because the commenter felt that it would be most beneficial to the commenter's State. Some commenters believed that the Drinking Water Needs Survey underestimated small system need because many small systems do not have the resources available to document current and future needs. Additionally, commenters argued that this option was most consistent with the SDWA's intent to provide relief to small systems and address the most serious threats to public health.

EPA disagrees that small system needs have been underestimated. The approach for estimating small system needs was developed by a workgroup that included State representatives. Under this approach, a statistically significant sample of small systems participated in the Drinking Water Needs Survey. Because the workgroup was aware that many small systems would not have the capacity to document their needs, the approach called for site visits to all selected systems. EPA staff and other water system professionals, often accompanied by State personnel, interviewed small system operators, examined all system components, and developed documentation on site. If project costs were not available, this documentation, along with data provided by States, engineering firms, and other water systems, was used to model small system costs. EPA believes this methodology yielded a very accurate estimate of need for small systems.

It was not feasible to conduct a survey of small systems that was statistically significant on a State-by-State basis because the Drinking Water Needs Survey approach emphasized the importance of accurately capturing small system needs through site visits. Therefore, the workgroup's approach called for a survey that was statistically significant on a national basis. (For medium and large systems, the survey was statistically significant on a State-by-State basis.) The national small system need was distributed among States based on the number of small systems in each State, taking system size and type (surface vs. ground) and regional construction cost trends into account. Since small system needs were not based on State-by-State samples, EPA concludes that it would not be appropriate to assign a disproportionately heavy weight to small system needs in the allotment formula.

Additionally, EPA notes that the decision to utilize Option 1, total need, does not diminish access by small systems to DWSRF funding. The formula allocates money to States, which in turn determine how to distribute the funds to systems. As required under SDWA 1452(a)(2), States must make available to small systems a minimum of fifteen percent of DWSRF funds, and it is within their purview to distribute a greater percentage. There is no reason to believe that weighting small system needs in the allotment formula would affect States'' decisions to provide DWSRF funding to small systems. The Agency adds that the reauthorized SDWA provides other relief for small systems. The Act includes provisions that allow States to issue subsidized loans to ''disadvantaged communities''. Further, it allows States to use two percent of their allotments for technical assistance to small systems serving 10,000 or fewer people. In addition, the SDWA requires that States make available a minimum of 15 percent of all dollars credited to a DWSRF for loan assistance to small systems that serve fewer than 10,000 persons.

Comments Suggesting Other Options

Two commenters advocated allotment formula options not presented in the October 31, 1996, Federal Register notice requesting comments. One commenter suggested a formula that would take into account either the number of individuals without piped water or State populations. However, EPA notes that SDWA Section 1452(a)(1)(D)(ii) requires that DWSRF funding be allocated to States based on a State's proportional share of the State needs identified in the most recent Drinking Water Needs Survey of eligible water systems. No provision is made in the law to distribute DWSRF funds to States based on the number of individuals without piped water or on population.

Another commenter suggested a hybrid formula based 50 percent on total need and 50 percent on Current SDWA Need. While EPA recognizes that current SDWA need emphasizes many of the most serious threats to public health, many commenters pointed out that the category does not cover all projects needed to protect public health.

There were no comments received in favor of Options 3 or 4.

The commenters also addressed other, related issues. Most significantly, commenters requested that EPA reevaluate the allotment formula after the completion of the next Drinking Water Needs Survey. The results of the next Drinking Water Needs Survey are due to Congress in February 2001 (SDWA Section 1452(h)). In late 2000, EPA intends to again solicit comments on the allotment formula for the purpose of evaluating whether the DWSRF allotment formula should be modified.

Some commenters also questioned whether comments on the allotment formula should have been solicited before the results of the Drinking Water Infrastructure Needs Survey were made available. The Agency believes that seeking comments on the options for the allotment formula before the survey results were available invited commenters to provide impartial comments on which option best meets the intent of the reauthorized SDWA. EPA is confident that this approach helped ensure that the chosen allotment method was equitable and would meet the intent of the SDWA.

EPA appreciates the participation of all commenters in this process. To reiterate, the Agency will use an allotment formula that allocates to each State a share of funding proportional to the State's total eligible need as determined by the Drinking Water Infrastructure Needs Survey: First Report to Congress (SDWA Section 1452(a)(1)(D)). Each State, and the District of Columbia, shall be allotted a minimum of one percent of the funds available for allotment to States (SDWA Section 1452(a)(1)(D)(ii)). The Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, will together receive an allotment not to exceed 0.33 percent of the funds available for allotment to the States (SDWA Section 1452(j)). The funds available for allotment to the States will equal the level of funds appropriated by Congress, less the national set-asides.

The national set-asides for fiscal year 1998 include funds for Indian Tribes and Alaska Native Village water systems at the level of one and one half of one percent of the total appropriation. (SDWA Section 1452(i)). This comes to $10,875,000 for Indian Tribes and Alaska Native Villages in fiscal year 1998. Also, a national set-aside of $2,000,000 is anticipated to be used for monitoring for unregulated contaminants. If funds are appropriated for the DWSRF at the level of the President's budget of $725 million and if the anticipated national set-asides do

not change, the total funds available to the States would equal $712,125,000. Each State's allotment, based on these assumptions, is shown below. Because the percentages are based on the total funds available for allotment to the States, they can be used for planning purposes for future years. Once the appropriated amount and national set-asides are known, a State's allotment can be estimated by subtracting the national set-asides from the total funds available for allotment and then applying the appropriate percentage shown below.

Fiscal Year 1998 DWSRF Allotment Results (Based on the President's Budget of $725 Million and National Set-Aside Assumptions)

Alabama $8,465,600 (1.19%);
Alaska $7,121,300 (1.00%);
Arizona $7,257,400 (1.02%);
Arkansas $10,132,200 (1.42%);
California $77,108,200 (10.83%);
Colorado $9,581,800 (1.35%);
Connecticut $7,121,300 (1.00%);
Delaware $7,121,300 (1.00%);
District of Columbia $7,121,300 (1.00%);
Florida $20,642,800 (2.90%);
Georgia $15,253,300 (2.14%);
Hawaii $7,121,300 (1.00%);
Idaho $7,121,300 (1.00%);
Illinois $ 24,753,200 (3.48%);
Indiana $8,687,500 (1.22%);
Iowa $11,238,700 (1.58%);
Kansas $10,008,100 (1.41%);
Kentucky $10,851,600 (1.52%);
Louisiana $9,949,200 (1.40%);
Maine $7,121,300 (1.00%);
Maryland $7,121,300 (1.00%);
Massachusetts $27,414,400 (3.85%);
Michigan $20,951,400 (2.94%);
Minnesota $11,856,100 (1.66%);
Mississippi $8,271,700 (1.16%);
Missouri $9,574,900 (1.34%);
Montana $7,121,300 (1.00%);
Nebraska $7,121,300 (1.00%);
Nevada $7,121,300 (1.00%);
New Hampshire $7,121,300 (1.00%);
New Jersey $17,347,900 (2.44%);
New Mexico $7,121,300 (1.00%);
New York $45,061,600 (6.33%);
North Carolina $12,859,400 (1.81%);
North Dakota $7,121,300 (1.00%);
Ohio $22,806,200 (3.20%);
Oklahoma $10,224,200 (1.44%);
Oregon $10,567,800 (1.48%);
Pennsylvania $22,404,800 (3.15%);
Puerto Rico $10,225,000 (1.44%);
Rhode Island $7,121,300 (1.00%);
South Carolina $7,669,400 (1.08%);
South Dakota $7,121,300 (1.00%);
Tennessee $9,557,400 (1.34%);
Texas $54,014,400 (7.58%);
Utah $7,121,300 (1.00%);
Vermont $7,121,300 (1.00%);
Virginia $13,895,300 (1.95%);
Washington $19,169,100 (2.69%);
West Virginia $7,121,300 (1.00%);
Wisconsin $9,548,400 (1.34%);
Wyoming $7,121,300 (1.00%);
Other Areas [3] $2,350,000 (0.33%)

[3] Other Areas include: the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

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).

ADDRESSES: A copy of the public comment received regarding this allotment formula is available for review at the EPA Drinking Water Docket, 401 M ST, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. The allotment formula results for fiscal year 1998 will be published in the Federal Register once national set-aside amounts have been finalized.

FOR FURTHER INFORMATION CONTACT: Mr. Clive Davies (202) 260–1421.

Dated: March 12, 1997.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 97–6827 Filed 3–17–97; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday
March 18, 1997

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 67

Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 67

RIN 0919–AAOO

Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Final regulations.

SUMMARY: This final rule establishes regulations for grants for health services research, evaluation, demonstration, and dissemination projects administered by the Agency for Health Care Policy and Research (AHCPR). It revises existing regulations governing health services research grants as administered by the former National Center for Health Services Research (NCHSR). The regulations set out program and administrative requirements for grantees and potential grant applicants, and describe the technical and scientific peer review by which applications for grants are to be evaluated. The regulations also establish procedures for the conduct of peer review of AHCPR contracts for health services research, evaluation, demonstration, and dissemination projects.

EFFECTIVE DATE: The final regulations are effective March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Phyllis M. Zucker, Director, Office of Planning and Evaluation, Agency for Health Care Policy and Research, Executive Office Center, Suite 603, 2101 East Jefferson Street, Rockville, MD 20852. Phone: (301) 594–2453.

SUPPLEMENTARY INFORMATION: The final regulations revise the existing regulations at 42 CFR part 67, subpart A, and substitute a new subpart B, to reflect the establishment of the Agency for Health Care Policy and Research (AHCPR) and its legislative mandates as set forth in Pub. L. 101–239, the Omnibus Budget Reconciliation Act of 1989 (OBRA of 1989), enacted on December 19, 1989. Section 6103 of Pub. L. 101–239 added a new Title IX to the Public Health Service (PHS) Act (42 U.S.C. 299–299c–6), which established AHCPR and provided that the Secretary of Health and Human Services (HHS) shall act through the Administrator of AHCPR in carrying out the authorities under Title IX. Pub. L. 102–410, the Agency for Health Care Policy and Research Reauthorization Act (October 13, 1992), further amended Title IX, and these amendments are reflected in the final regulations, as well. Technical amendments to Title IX subsequently included in section 2013 of Pub. L. 103–43, the National Institutes of Health Revitalization Act of 1993, did not affect this rule.

A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on November 16, 1993 (58 FR 60510), with a 60-day comment period. No public comments were received.

Background

The AHCPR is charged with enhancing the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR achieves these goals through the establishment of a broad base of scientific research, and through the promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and in the organization, financing, and delivery of health services. In carrying out these functions, AHCPR has built on and expanded the work supported over twenty years by its predecessor, the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Title IX, in particular sections 902 and 925(c), authorizes the Administrator to award grants to, and enter into cooperative agreements with, public and private nonprofit entities and individuals to support research, demonstration projects, evaluations, and dissemination of information, on health care services and systems for the delivery of these services. When appropriate, the Administrator also may enter into contracts with individuals, as well as public and private entities.

Section 902(d) of the PHS Act, as amended by Pub L. 102–410, specifies that the Administrator may provide financial assistance for the costs of developing and operating centers for multidisciplinary health services research, demonstration projects, evaluations, training, and policy analysis for carrying out the purposes of Title IX.

Under section 902(e), as amended by Pub. L. 102–410, AHCPR may use its Title IX authorities to carry out, and coordinate appropriately with, activities authorized by the Social Security Act, including experiments, demonstration projects, and other related activities. Further, section 902(e) requires that research and other activities conducted under Title IX on the outcomes of health care services and procedures which affect the Medicare and Medicaid programs be consistent with the provisions of section 1142 of the Social Security Act, which, like Title IX, was enacted by section 6103 of Pub. L. 101–239 (OBRA of 1989). The authorities in section 1142 (42 U.S.C. 1320–12b) enhance and elaborate on AHCPR's mandate to conduct and support outcomes and effectiveness research under Title IX.

Section 1142(a)(1) directs the Secretary, acting through the Administrator of AHCPR, to support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures, in order to identify the manner in which diseases, disorders, and other health conditions can be prevented, diagnosed, treated, and managed most effectively. Section 1142(a)(2) authorizes evaluations of the comparative effects on health and functional capacity and of alternative services and procedures for preventing, diagnosing, treating, and managing health conditions.

Also provided for in section 1142(c), for the purpose of facilitating outcomes and effectiveness research, are various authorities to conduct and support activities such as the improvement of methodologies, criteria, and data bases used in outcomes and effectiveness research; and research and demonstrations on the use of claims data and data on the clinical and functional status of patients.

Section 1142(e) requires the Secretary (through AHCPR) to provide for dissemination of the findings of outcomes and effectiveness research conducted or supported under section 1142 and clinical practice guidelines under sections 911–914 of the PHS Act. Section 1142(e)(2) provides that the Secretary (through AHCPR) will work with professional associations, medical organizations, and other relevant groups to identify and implement effective means to educate health care providers, practitioners, educators, consumers, and policymakers in using research findings and guidelines. Authority to support evaluations of the impact of such dissemination activities, and authority to support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures, are provided under sections 1142 (f) and (g).

Pub. L. 102–410 amended section 924(a) of the PHS Act to require that the Administrator define by regulation what constitutes financial interests that could reasonably be expected to create a bias in the results of AHCPR-supported grants, cooperative agreements, or contract projects; and the actions that

will be taken in response to any such interests. Pub. L. 103–43 included similar requirements for the National Institutes of Health (NIH) regarding protection against financial conflicts of interest in certain projects of research. A final regulation on Objectivity in Research was published by the Department in the Federal Register on July 11, 1995 (60 FR 35810). This final rule implements both AHCPR and NIH statutory requirements for regulations on conflicts of interest in research projects, and also applies broadly to all research funded by the Public Health service agencies of the Department, except Phase I projects under the Small Business Innovation Research (SBIR) program.

The Final Regulations

The provisions in AHCPR final regulations are essentially the same as those in the NPRM. Modifications incorporated for improved clarity and increased flexibility are discussed below. Other technical and editorial changes have also been incorporated.

Subpart A

The regulations at subpart A establish program and administrative requirements governing grants and cooperative agreements to carry out the purposes of Title IX of the PHS Act and section 1142 of the Social Security Act. The regulations set out the technical and scientific peer review procedures and criteria by which applications for grants and cooperative agreements are to be reviewed, in accordance with section 922(e) of the PHS Act (42 U.S.C. 229c–1(e)).

Section 67.13 Eligible Projects

The listing of eligible projects dealing with ''health care technology'' (paragraph (d)) has been reworded from the NPRM to read: ''Health care technologies, facilities, and equipment, including assessments of health care technologies and innovative approaches to such assessments, and technology diffusion.'' This new language reflects the emphasis of Pub. L. 102–410 on innovation in approaches to technology assessments. The category dealing with special populations now explicitly lists women and children, and dissemination has been expanded to include examples of the range of audiences to whom AHCPR efforts are directed.

Section 67.15 Peer Review of Applications

Proposed § 67.15(a), by exempting ''small grants'' from review by established peer review groups and procedures, would have inadvertently restricted the flexibility for review of small grants provided by section 922(d)(2) of the PHS Act. Section 922(d)(2) permits the Administrator to make adjustments in the standard review procedures for ''small grant'' applications, which have direct costs that will not exceed the amount specified in 922(d)(2) (currently $50,000). These adjustments may be made for the purpose of encouraging the entry of individuals into the field of research and promoting clinical practice-oriented research, as well as for other purposes which the Administrator may determine.

Accordingly, paragraphs (a) and (b) have been modified and retitled to allow for ''small grants'' to be reviewed by established peer review groups, as well as to permit adjustments in the procedures, such as review by field readers and ad hoc groups. Paragraph (b) describes the procedures for adjusting the peer review process for ''small grants.'' The new titles are, respectively, ''General procedures for peer review'' and ''Procedural adjustments for small grants.'' These modifications will ensure maximum flexibility for the Administrator, which is consistent with section 922(d)(2).

Section 67.15(c)(1) General Review Criteria

The NPRM included as a proposed review criterion, ''The degree to which the proposed project addresses the purposes of Title IX of the PHS Act and section 1142 of the Social Security Act * * *'' This has been moved to § 67.16, ''Evaluation and disposition of applications.'' Assuring that broad legislative mandates are being met is part of AHCPR's overall program and funding decision processes, rather than the scientific and technical review of individual applications. The second half of the proposed criterion, the degree to which the proposed project addresses ''any special AHCPR priorities that have been announced by the Administrator,'' has been retained for reviewers' consideration, as applicable.

Also, the review criteria under § 67.15(c)(1) have been expanded to include, ''The extent to which women and minorities are adequately represented in study populations.'' This is consistent with AHCPR's commitment and current requirements, as provided in application materials, to ensure wide and appropriate representation in study populations.

Section 67.15(c)(2) Review Criteria for Conference Grants

This section has been streamlined so that the final regulation includes only the broad general review criteria for conference grants, comparable to the criteria for non-conference grants. Additional detailed criteria may be included in published program announcements, which permit more flexibility for AHCPR in assuring that the criteria are responsive to the changing needs of the health care community.

Also, included in the final review criteria is: ''The extent to which the health concerns of women and minorities will be addressed in conference topic(s), as appropriate.'' This addition makes the conference grants criteria parallel to the criteria under § 67.15(c)(1) and reflects AHCPR's commitment to encourage wide and appropriate representation of the health concerns of women and minorities in all of its activities.

Consistent with § 67.15(c)(1), ''The degree to which the proposed project addresses the purposes of Title IX of the PHS Act and section 1142 of the Social Security Act * * *'' has been moved to § 67.16. The degree to which a proposed project addresses ''any special AHCPR priorities that have been announced by the Administrator'' has been retained for reviewers' consideration, as applicable.

Section 67.16 Evaluation and Disposition of Applications

''The degree to which the proposed project addresses the purposes of Title IX of the PHS Act and section 1142 of the Social Security Act'' included in the NPRM as a peer review criterion is contained in the final regulations under paragraph § 67.16(a). As discussed above, the degree to which the overall legislative purposes are being addressed is a part of the AHCPR program and policy funding decision process, as the Administrator seeks to ensure a broad and balanced portfolio of health services research. (See discussions of § 67.15(c)(1) and § 67.15(c)(2).)

Section 67.17 Grant Award

Proposed § 67.17(g) regarding supplemental awards has been reworded to improve clarity.

Proposed § 67.17(h) would have continued to require peer review of all noncompeting continuation applications for projects with a project period in excess of 2 years and with direct costs in excess of the amount specified in section 922(d)(2) of the PHS Act (small grants currently at $50,000). This was consistent with longstanding AHCPR requirements and practices. AHCPR believes that, in keeping with the Administration's Reinventing Government Initiative, it is important to allow more flexibility in these review

procedures and to use peer reviewers in the most efficient way. The final regulations ensure this flexibility by providing that AHCPR may require peer review of noncompeting continuation applications, but do not mandate such reviews.

Subpart B

The existing regulations at subpart B pertain to grants for health services research centers under former section 305(e) of the PHS Act (originally section 305(d)), which described specific types of research centers to be supported, and mandated particular requirements for each center. Pub. L. 101–239 repealed section 305 of the PHS Act in its entirety and provided broad authority for support to multidisciplinary health services research centers under Title IX of the PHS Act. See section 902(d), as amended by Pub. L. 102–410 (42 U.S.C. 299a(d)). Pub. L. 101–239 also provided broad authority for support of research centers for the conduct of outcomes research under section 1142(c) of the Social Security Act (42 U.S.C. 1320b–12(c)(4)). Grants for centers under Title IX of the PHS Act and section 1142(c) of the Social Security Act are made in accordance with subpart A. Therefore, the Department is removing the existing subpart B, which is obsolete, and adding a new subpart B pertaining to the peer review of contract proposals as required by section 922(e) of the PHS Act (42 U.S.C. 299c–1(e)). All other aspects of AHCPR contract administration and management are conducted in accordance with the Federal Acquisition Regulations (FAR) and the Health and Human Services Acquisition Regulations (HHSAR).

Section 922 of the PHS Act requires that technical and scientific peer review shall be conducted not only with respect to each application for a grant or cooperative agreement, but also with respect to each proposal for a contract under Title IX. Section 922(e) further requires that regulations be issued for the conduct of such peer review. The new Subpart B satisfies this requirement with respect to the peer review of contracts. The regulations in this subpart are to be used in conjunction with the FAR and the HHSAR, which govern all Department contracts.

The regulations apply to the peer review of contract proposals under section 1142 of the Social Security Act (42 U.S.C. 1320b–12), as well as Title IX of the PHS Act. This is consistent with the interrelationship between the two authorities. The peer review requirements in § 67.102 are applicable to all contract proposals, regardless of the projected costs of the contracts. (Section 922(d)(2) of the PHS Act does not provide for procedural adjustments in the peer review process for contract proposals as it does for applications for small grants as set out in § 67.15(b) of subpart A.)

Smoke-Free Workplace

The Department and its Public Health Service agencies strongly encourage all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, The Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the Public Health Service mission to protect and advance the physical and mental health of the American people.

Executive Order 12866 and Regulatory Flexibility Act

The final regulations have been reviewed in accordance with the requirements of Executive Order No. 12866, ''Regulatory Planning and Review.'' The Secretary, therefore, has determined that the regulations do not constitute a major rule, as defined under the order and, as a result, have not been reviewed by the Office of Management and Budget. In addition, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. The regulations make minor revisions to the existing grant and contract procedures, and do not impose any consequential costs on the grantees or contractors. Therefore, the Secretary has determined that a regulatory impact analysis is not required.

Paperwork Reduction Act of 1995

The final regulations do not contain any new reporting or recordkeeping requirements subject to review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The applications used for the programs covered by the regulations at 42 CFR part 67, subpart A, (PHS Form 398 ''Application for Public Health Service Grant and HS Form 2590 ''Application for Continuation of Public Health Service Grant,'' and PHS Form 5161 ''Application for State and Local Governments''), are approved under OMB Approval Nos. 0925–0001 and 0937–0189.

List of Subjects in 42 CFR Part 67

Grant programs—Health services research, evaluation, demonstration, and dissemination projects; peer review of grants and contracts.

Dated: February 14, 1997.

Clifton R. Gaus,

Administrator, Agency for Health Care Policy and Research.

(Catalog of Federal Domestic Assistance No. 93n226—Health Services Research and Development Grants, and No. 93.180—Medical Effectiveness Research)

Accordingly, 42 CFR part 67 is revised to read as follows:

Part 67—Agency for Health Care Policy and Research Grants and Contracts

Subpart A—Research Grants for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

Subpart B—Peer Review of Contracts for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

Authority: Pub. L. 103–43, 107 Stat. 214–215, Pub. L. 102–410, 106 Stat. 2094–2101 and sec. 6103, Pub. L. 101–239, 103 Stat. 2189–2208, Title IX of the Public Health Service Act (42 U.S.C. 299–299c–6); and sec. 1142, Social Security Act (42 U.S.C. 1320b–12).

Subpart A—Research Grants for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

§ 67.10 Purpose and scope.

The regulations of this subpart apply to the award by AHCPR of grants and cooperative agreements under:

(a) Title IX of the Public Health Service Act to support research, evaluation, demonstration, and dissemination projects, including conferences, on health care services and systems for the delivery of such services, as well as to establish and

operate multidisciplinary health services research centers.

(b) Section 1142 of the Social Security Act to support research on the outcomes, effectiveness, and appropriateness of health care services and procedures, including but not limited to, evaluations of alternative services and procedures; projects to improve methods and data bases for outcomes, effectiveness, and other research; dissemination of research information and clinical guidelines, conferences, and research on dissemination methods.

§ 67.11 Definitions.

As used in this subpart—

Administrator means the Administrator and any other officer or employee of the Agency for Health Care Policy and Research to whom the authority involved may be delegated.

Agency for Health Care Policy and Research (AHCPR) means that unit of the Department of Health and Human Services established by section 901 of the Public Health Service Act.

Direct costs means the costs that can be identified specifically with a particular cost objective, such as compensation of employees for the time and effort devoted specifically to the approved project, and the costs of materials acquired, consumed, or expended specifically for the purpose of the approved project.

Grant means an award of financial assistance as defined in 45 CFR parts 74 and 92, including cooperative agreements.

Grantee means the organizational entity or individual to which a grant, including a cooperative agreement, under Title IX of the Public Health Service Act or section 1142 of the Social Security Act and this subpart is awarded and which is responsible and accountable both for the use of the funds provided and for the performance of the grant-supported project or activities. The grantee is the entire legal entity even if only a particular component is designated in the award document.

Nonprofit as applied to a private entity, means that no part of the net earnings of such entity inures or may lawfully inure to the benefit of any shareholder or individual.

Peer review group means a panel of experts, established under section 922(c) of the PHS Act, who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group as set out in this subpart. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group under this subpart.

PHS Act means the Public Health Service Act, as amended.

Principal investigator means a single individual, designated in the grant application and approved by the Administrator, who is responsible for the scientific and technical direction of the project.

Social Security Act means the Social Security Act, as amended.

§ 67.12 Eligible applicants.

Any public or nonprofit private entity or any individual is eligible to apply for a grant under this subpart.

§ 67.13 Eligible projects.

Projects for research, evaluations, demonstrations, dissemination of information (including research on dissemination), and conferences, related to health care services and the delivery of such services, are eligible for grant support. These include, but are not limited to, projects in the following categories:

(a) Effectiveness, efficiency, and quality of health care services;

(b) Outcomes of health care services and procedures;

(c) Clinical practice, including primary care and practice-oriented research;

(d) Health care technologies, facilities, and equipment, including assessments of health care technologies and innovative approaches to such assessments, and technology diffusion;

(e) Health care costs and financing, productivity, and market forces;

(f) Health promotion and disease prevention;

(g) Health statistics and epidemiology;

(h) Medical liability;

(i) AID/HIV infection, particularly with respect to issues of access and delivery of health care services;

(j) Rural health services;

(k) The health of low-income, minority, elderly, and other underserved populations, including women and children; and

(l) Information dissemination and research on dissemination methodologies, directed to health care providers, practitioners, consumers, educators, review organizations, and others.

§ 67.14 Application

(a) To apply for a grant, an entity or individual must submit an application in the form and at the time that the Administrator requires. The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the PHS Act and the Social Security Act, as pertinent, the regulations of this subpart, and any additional terms or conditions of any grant awarded.

(b) In addition to information requested on the application form, the applicant must provide such other information as the Administrator may request.

§ 67.15 Peer review of applications.

(a) *General procedures for peer review.* (1) All applications for support under this subpart will be submitted by the Administrator for review to a peer review group, in accordance with section 922(a) of the PHS Act, except that applications eligible for review under section 922(d)(2) of the PHS Act (''small grants'') may be reviewed under adjusted procedures in accordance with paragraph (b) of this section.

(2) Members of the peer review group will be selected based upon their training and experience in relevant scientific and technical fields, taking into account, among other factors:

(i) The level of formal education (e.g., M.A., Ph.D., M.D., D.N.Sc.) completed by the individual and/or the individual's pertinent experience and expertise;

(ii) The extent to which the individual has engaged in relevant research, the capacities (e.g., principal investigator, assistant) in which the individual has done so, and the quality of such research;

(iii) The extent of the professional recognition received by the individual as reflected by awards and other honors received from scientific and professional organizations outside the Department of Health and Human Services;

(iv) The need of the peer review group to include within its membership experts representing various areas of specialization within relevant scientific and technical fields, or specific health care issues; and

(v) Appropriate representation based on gender, racial/ethnic origin, and geography.

(3) Review by the peer review group under paragraph (a) of this section is conducted by using the criteria set out in paragraph (c) of this section.

(4) The peer review group to which an application has been submitted under paragraph (a) of this section shall make a written report to the Administrator on each application, which shall contain the following parts:

(i) The first part of the report shall consist of a factual summary of the proposed project, including a

description of its purpose, scientific approach, location, and total budget.

(ii) The second part of the report shall address the scientific and technical merit of the proposed project with a critique of the proposed project with regard to the factors described in paragraphs (c)(1)(i) through (c)(1)(x) or (c)(2)(i) through (c)(2)(vii) of this section as applicable. This portion of the report shall include a set of recommendations to the Administrator with respect to the disposition of the application based upon its scientific and technical merit. The peer review panel may recommend to the Administrator that an application:

(A) Be given consideration for funding,

(B) Be deferred for a later decision, pending receipt of additional information, or

(C) Not be given further consideration.

(iii) For each application recommended for further consideration by the Administrator, the report shall also provide a priority score based on the scientific and technical merit of the proposed project, and make recommendations on the appropriate project period and level of support. The report may also address, as applicable, the degree to which the proposed project relates to AHCPR-announced priorities.

(b) *Procedural adjustments for small grants.* (1) The Administrator may make adjustments in the peer review procedures established in accordance with paragraph (a) of this section for grant applications with total direct costs that do not exceed the amount specified in section 922(d)(2) of the PHS Act, hereafter referred to as ''small grants.''

(2) Non-Federal and Federal experts will be selected by the Administrator for the review of small grant applications on the basis of their training and experience in particular scientific and technical fields, their knowledge of health services research and the application of research findings, and their special knowledge of the issue(s) being addressed or methods and technology being used in the specific proposal.

(3) Review of applications for small grants may be by a review group established in accordance with paragraph (a) of this section, or by individual field readers, or by an ad hoc group of reviewers.

(4) The review criteria set forth in paragraph (c) of this section shall be used for the review of small grant applications.

(5) Each reviewer or group of reviewers to whom an application has been submitted under paragraph (b) of this section shall make a written report to the Administrator on each application. Each report shall summarize the findings of the review and provide a recommendation to the Administrator on whether the application should be given further consideration. For applications recommended for further consideration, the report may also address, as applicable, the degree to which the proposed project relates to AHCPR-announced priorities.

(c) *Review criteria.* The review criteria set out in this paragraph apply to both applications reviewed by peer review panels in accordance with paragraph (a) of this section, and applications for small grants reviewed in accordance with paragraph (b) of this section.

(1) *General review criteria.* In carrying out a review under this section for grants (other than conference grants), the following review criteria will be taken into account, where appropriate:

(i) The significance and originality from a scientific or technical standpoint of the goals of the project;

(ii) The adequacy of the methodology proposed to carry out the project;

(iii) The availability of data or the adequacy of the proposed plan to collect data required in the analyses;

(iv) The adequacy and appropriateness of the plan for organizing and carrying out the project;

(v) The qualifications and experience of the principal investigator and proposed staff;

(vi) The reasonableness of the budget and the time frame for the project, in relation to the work proposed;

(vii) The adequacy of the facilities and resources available to the grantee;

(viii) The extent to which women and minorities are adequately represented in study populations;

(ix) Where an application involves activities which could have an adverse effect upon humans, animals, or the environment, the adequacy of the proposed means for protecting against or minimizing such effects; and

(x) Any additional criteria that may be announced by the Administrator from time to time for specific categories of grant applications (e.g., proposed projects for support of research centers) eligible for support under this subpart.

(xi) In addition to the scientific and technical criteria above, peer reviewers may be asked to consider the degree to which a proposed project addresses any special AHCPR priorities that have been announced by the Administrator, as applicable.

(2) *Review criteria for conference grants.* In carrying out reviews of conference grants under paragraphs (a) and (b) of this section, the following review criteria will be taken into account, as appropriate:

(i) The significance of the proposed conference, specifically the importance of the issue or problem being addressed, including methodological or technical issues for dealing with the development, conduct, or use of health services research;

(ii) The qualifications of the staff involved in planning and managing the conference;

(iii) The adequacy of the facilities and other resources available for the conference;

(iv) the appropriateness of the proposed budget, including other sources of funding;

(v) The extent to which the health concerns of women and minorities will be addressed in the conference topic(s), as appropriate;

(vi) The plan for evaluating and disseminating the results of the conference; and

(vii) Any additional criteria that may be announced by the Administrator.

(viii) In addition to the scientific and technical criteria above, peer reviewers may be asked to consider the degree to which a proposed project addresses any special AHCPR priorities that have been announced by the Administrator, as appropriate.

(d) *Conflict of interest.* (1) Members of peer review groups will be screened for potential conflicts of interest prior to appointment and will be required to follow Department policies and procedures consistent with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), Executive Order 12674 (as modified by Executive Order 12731).

(2) In addition to any restrictions referenced under paragraph (d)(1) of this section:

(i) No member of a peer review group (or individual reviewer) may participate in or be present during any review by such group of a grant application in which, to the member's knowledge, any of the following has a financial interest:

(A) The number or his or her spouse, minor child, or partner;

(B) Any organization in which the member is serving as an officer, director, trustee, general partner, or employee; or

(C) Any organization with which the member is negotiating or has any arrangement concerning prospective employment or other similar association, and further;

(ii) In the event that any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the principal investigator or member of the staff responsible for carrying out any

research or development activities contemplated as part of a grant application, that member of the group, or the group, may be disqualified from the review and the review conducted by another group with the expertise to do so. An ad hoc group selected in accordance with § 67.15(a), or § 67.15(b) as applicable, may also be used for the review. Any individual reviewer to whom the conditions of this paragraph apply would also be disqualified as a reviewer.

(iii) No member of a peer review group or individual may participate in any review under this subpart of a specific grant application for which the member has had or is expected to have any other responsibility or involvement (whether preaward or postaward) as an officer or employee of the United States.

(3) Where permissible under the standards and order(s) cited in paragraph (d)(1) of this section, the Administrator may waive the requirements in paragraph (d)(2) of this section if it is determined that there is no other practical means for securing appropriate expert advice on a particular grant application.

§ 67.16 Evaluation and disposition of application.

(a) *Evaluation.* After appropriate peer review in accordance with § 67.15, the Administrator will evaluate applications recommended for further consideration, taking into account, among other factors:

(1) The degree to which the purposes of Title IX of the PHS Act and section 1142 of the Social Security Act, as applicable, are being addressed;

(2) Recommendations made by reviewers pursuant to § 67.15;

(3) Any recommendations made by the National Advisory Council for Health Care Policy, Research, and Evaluation, as applicable;

(4) The appropriateness of the budget;

(5) The extent to which the research proposal and the fiscal plan provide assurance that effective use will be made of grant funds;

(6) The demonstrated business management capability of the applicant;

(7) The demonstrated competence and skill of the staff, especially the senior personnel, in light of the scope of the project;

(8) The probable usefulness of the results of the project for dealing with national health care issues, policies, and programs; and

(9) The degree to which AHCPR-announced priorities or purposes are being addressed.

(b) *Disposition.* On the basis of the evaluation of the application as provided in paragraph (a) of this section, the Administrator shall: give consideration for funding, defer for a later decision, pending receipt of additional information, or give no further consideration for funding, to any application for a grant under this subpart; except that the Administrator may not fund an application which has not been recommended for further consideration as a result of peer review in accordance with § 67.15. A recommendation against further consideration shall not preclude reconsideration, if the application is revised, responding to issues and questions raised during the review, and resubmitted for peer review at a later date.

§ 67.17 Grant award.

(a) Within the limits of available funds, the Administrator may award grants to those applicants whose projects are being considered for funding, which in the judgment of the Administrator, will promote best the purposes of Title IX of the PHS Act and (if applicable) section 1142 of the Social Security Act, AHCPR priorities, and the regulations of this subpart.

(b) The Notice of Grant Award specifies how long the Administrator intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3–5 years, except for small grants, which usually are 1 year awards. The project period as specified in the Notice of Grant Award shall begin no later than 9 months following the date of the award, except that the project period must begin in the same fiscal year as that from which funds are being awarded.

(c) Upon request from the grantee, Department grants policy permits an extension of the project period for up to 12 months, without additional funds, when more time is needed to complete the research. The Administrator may approve a request for an additional extension of time based on unusual circumstances with written justification submitted by the grantee, prior to the completion of the project period. In no case will an additional extension of more than 12 months be approved.

(d) Generally, a grant award will be for 1 year, and subsequent continuation awards will be for 1 year at a time. A grantee must submit a separate continuation application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices and the availability of funds. In all cases, continuation awards require a determination by the Administrator that continuation is in the best interest of the Federal Government.

(e) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application.

(f) *Small grants.* For particular categories of small grants, such as dissertation research support, the Administrator may establish a limit on total direct costs to be awarded. Any categorical limits will be announced in advance of the deadline for receipt of applications for such small grants.

(g) *Supplemental awards.* (1) Except for small grants, supplemental awards that would exceed 20 percent of the AHCPR approved direct costs of the project during the project period, or that request an increase in funds to support a change or a significant expansion of the scope of the project, will be reviewed as competing supplemental grants in accordance with § 67.15(a). A supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.21 shall be excluded from the 20 percent aggregate.

(2) In the case of small grants, as defined in section 922(d)(2) of the PHS Act, the Administrator will not approve a supplemental award during the project period (excluding any supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.21) that will, in the aggregate, exceed 10 percent of the AHCPR approved direct costs of the project.

(h) *Noncompeting continuation awards.* Each project with a project period in excess of 2 years and with direct costs over the project period in excess of the amount specified in section 922(d)(2) may be reviewed during the second budget period and during each subsequent budget period by at least two members of the peer review group that reviewed the initial application, or individuals who participated in that review, to the extent practicable. Recommendations to the Administrator for continuation support will be based upon evaluation of:

(1) The progress of the project in meeting project objectives;

(2) The appropriateness of the management of the project and allocation of resources within the project;

(3) The adequacy and appropriateness of the plan for carrying out the project during the budget period in light of the

accomplishments during previous budget periods; and

(4) The reasonableness of the proposed budget for the subsequent budget period.

§ 67.18 Use of project funds.

Grant funds must be spent solely for carrying out the approved project in accordance with Title IX of PHS Act, section 1142 of the Social Security Act (if applicable), the regulations of this subpart, the terms and conditions of the award, and the provisions of 45 CFR part 74, or part 92 for State and local government grantees.

§ 67.19 Other applicable regulations.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

37 CFR Part 401—Inventions and patents
42 CFR Part 50 Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science
42 CFR Part 50 Subpart D—Public Health Service grant appeals procedure
42 CFR Part 50 Subpart F—Responsibility of applicants for promoting objectivity in research for which PHS funding is sought
45 Part 16—Procedures of the departmental grant appeals board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in DHHS programs or activities receiving Federal financial assistance
45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements with State and local governments
45 CFR Part 93—New restrictions on lobbying

§ 67.20 Confidentiality.

The confidentiality of identifying information obtained in the course of conducting or supporting grant and cooperative agreement activities under this subpart is protected by section 903(c) of the PHS Act. Specifically:

(a) No information obtained in the course of conducting or supporting grant and cooperative agreement activities under this subpart, if the entity or individual supplying the information or described in it is identifiable, may be used for any purpose other than the purpose for which it was supplied, unless the identifiable entity or individual supplying the information or described in it has consented to such other use, in the recorded form and manner as the Administrator may require; and

(b) No information obtained in the course of grant and cooperative agreement activities conducted or supported under this subpart maybe published or released in other form if the individual who supplied the information or who is described in it is identifiable, unless such individual has consented, in the recorded form and manner as the Administrator may require, to such publication or release.

§ 67.21 Control of data and availability of publications.

Except as otherwise provided in the terms and conditions of the award and subject to the confidentiality requirements of section 903(c) of the PHS Act, section 1142(d) of the Social Security Act, and § 67.20 of this subpart:

(a) All data collected or assembled for the purpose of carrying out health services research, evaluation, demonstration, or dissemination projects supported under this subpart shall be made available to the Administrator, upon request:

(b) All publications, reports, papers, statistics, or other materials developed from work supported, in whole or in part, by an award made under this subpart must be submitted to the Administrator in a timely manner. All such publications must include an acknowledgement that such materials are the results of, or describe, a grant activity supported by AHCPR;

(c) The AHCPR retains a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, use, or disseminate any copyrightable material developed in the course of or under a grant for any purpose consistent with AHCPR's statutory responsibilities, and to authorize others to do so for the accomplishment of AHCPR purposes; and

(d) Except for identifying information protected by section 903(c) of the PHS Act, the Administrator, as appropriate, will make information obtained with AHCPR grant support available, and arrange for dissemination of such information and material on as broad a basis as practicable and in such form as to make them as useful as possible to a variety of audiences, including health care providers, practitioners, consumers, educators, and policymakers.

§ 67.22 Additional conditions.

The Administrator may, with respect to any grant awarded under this subpart, impose additional conditions prior to or at the time of any award when in the Administrator's judgment such conditions are necessary to assure or protect advancement of the approved project, the interest of the public health, or the conservation of grant funds.

Subpart B—Peer Review of Contracts for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

§ 67.101 Purpose and scope.

(a) The regulations of this subpart apply to the peer review of contracts under:

(1) Title IX of the Public Health Service Act to support research, evaluation, demonstration, and dissemination projects, including conferences, on health care services and systems for the delivery of such services; and development of clinical practice guidelines, quality standards, performance measures, and review criteria.

(2) Section 1142 of the Social Security Act to support research on the outcomes, effectiveness, and appropriateness of health care services and procedures, including, but not limited to, evaluations of alternative services and procedures; projects to improve methods and data bases for outcomes and effectiveness research; dissemination of research information and clinical practice guidelines, as well as quality standards, performance measures, and review criteria; conferences; and research on dissemination methods.

(b) The regulations of this subpart also contain provisions respecting confidentiality of research data, control of data, and availability of information.

§ 67.102 Definitions.

Contract proposal means a written offer to enter into a contract submitted to a contracting officer by an individual or non-Federal organization, and including at a minimum a description of the nature, purpose, duration, cost of project and methods, personnel, and facilities to be utilized in carrying out the requirements of the contract.

Peer review group means a panel of experts, as required by section 922(c) of

the PHS Act, established to conduct technical and scientific review of contract proposals and to make recommendations to the Administrator regarding the merits of such proposals.

Request for proposals means a Government solicitation to prospective offerors, under procedures for negotiated contracts, to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the solicitation. The solicitation contains information sufficient to enable all offerors to prepare competitive proposals, and is as complete as possible with respect to: The nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements, clauses or other circumstances affecting the contract; and criteria by which the proposals will be evaluated.

§ 67.103 Peer review of contract proposals.

(a) All contract proposals for AHCPR support will be submitted by the Administrator for review to a peer review group, as required in section 922(a) of the PHS Act. Proposals will be reviewed in accordance with the Federal Acquisition Regulations and the Health and Human Services Acquisition Regulations (48 CFR Ch. I and III) and the requirements of the pertinent Request for Proposal.

(b) *Establishment of peer review groups.* In accordance with section 922(c) of the PHS Act, the Administrator shall establish such peer review groups as may be necessary to review all contract proposals submitted to AHCPR.

(c) *Composition of peer review groups.* The peer review groups shall be composed of individuals, in accordance with section 922(c) of the PHS Act, as amended, who by virtue of their training or experience are eminently qualified to carry out the duties of such a peer review group. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Members of the peer review group will be selected based upon their training or experience in relevant scientific and technical fields, taking into account, among other factors:

(1) The level of formal education (e.g., M.A., Ph.D., M.D., D.N.Sc.) completed by the individual and/or, as appropriate, the individual's pertinent experience and expertise;

(2) The extent to which the individual has engaged in relevant research, the capacities (e.g., principal investigator, assistant) in which the individual has done so, and the quality of such research;

(3) The extent of the professional recognition received by the individual as reflected by awards and other honors received from scientific and professional organizations outside the Department of Health and Human Services;

(4) The need of the peer review group to include in its membership experts representing various areas of specialization in relevant scientific and technical fields, or specific health care issues; and

(5) Appropriate representation based on gender, racial/ethnic origin, and geography, to the extent practicable.

(d) *Term of peer review group members.* Notwithstanding section 922(c)(3) of the PHS Act, members of peer review groups appointed to review contract proposals will be appointed to such groups for a limited period of time, as determined by the Administrator; such as on an annual basis, or until the peer review of the contract proposals is completed, or until the expiration of the contract(s) awarded as a result of the peer review.

(e) *Conflict of interest.* (1) Members of peer review groups will be screened for potential conflicts of interest prior to appointment and will be required to follow Department policies and procedures consistent with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) and Executive Order 12674 (as modified by Executive Order 12731).

(2) In addition to any restrictions referenced under paragraph (e)(1) of this section:

(i) No member of a peer review group may participate in or be present during any review by such group of a contract proposal in which, to the member's knowledge, any of the following has a financial interest:

(A) The member or his or her spouse, minor child, or partner;

(B) Any organization in which the member is serving as an officer, director, trustee, general partner, or employee; or

(C) Any organization with which the member is negotiating or has any arrangement concerning prospective employment or other similar association, and further;

(ii) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the project director or member of the staff responsible for carrying out any contract requirements as specified in the contract proposal, that member is disqualified and will be replaced as appropriate.

§ 67.104 Confidentiality.

Identifying information obtained in the course of conducting AHCPR contract activities under this subpart is protected by section 903(c) of the PHS Act. Specifically:

(a) No information obtained in the course of conducting AHCPR contract activities under this subpart, if the entity or individual supplying the information or described in it is identifiable, may be used for any purpose other than the purpose for which it was supplied, unless the identifiable entity or individual supplying the information or described in it has consented to such other use, in the recorded form and manner as the Administrator may require.

(b) No information obtained in the course of conducting AHCPR contract activities under this subpart may be published or released in other form if the individual who supplied the information or who is described in it is identifiable, unless such individual has consented, in the recorded form and manner as the Administrator may require, to such publication or release.

§ 67.105 Control of data and availability of publications.

(a) Data will be collected, maintained, and supplied as provided in each contract subject to the confidentiality requirements of section 903(c) of the PHS Act, section 1142(d) of the Social Security Act, and § 67.104 of this subpart.

(b) All publications, reports, papers, statistics, or other materials developed from work supported in whole or in part by contracts under Title IX of the PHS Act or section 1142 of the Social Security Act, if applicable, must be submitted to the Administrator in accordance with the terms of the contract. All publications must include an acknowledgment that such materials are the results of, or describe, a contractual activity supported by AHCPR.

(c) In accordance with 48 CFR 52.227–14, unless otherwise specified in the contract, AHCPR will retain a license to use, disclose, reproduce, prepare derivative works from, distribute copies to the public, and perform publicly and display publicly any copyrightable materials produced under a contract for any purpose consistent with AHCPR's statutory responsibilities, and to have or permit others to do so for accomplishment of AHCPR purposes.

(d) Except for identifying information protected by section 903(c) of the PHS Act, the Administrator, as appropriate, will make information provided in

accordance with paragraphs (a) and (b) of this section available, and arrange for dissemination of such information and materials on as broad a basis as practicable and in such form as to make them as useful as possible to a variety of audiences, including health care providers, practitioners, consumers, educators, and policymakers.

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