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Title 3—

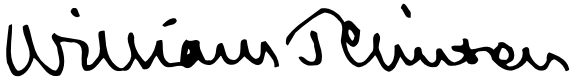
The President

Executive Order 13056 of July 21, 1997

Further Amendment to Executive Order 13017, Advisory Commission on Consumer Protection and Quality in the Health Care Industry

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add an additional two members to the Advisory Commission on Consumer Protection and Quality in the Health Care Industry, it is hereby ordered as follows:

Section 1(a) of Executive Order 13017, as amended, is further amended by deleting the number ''32'' in the second sentence and inserting the number ''34'' in lieu thereof.



THE WHITE HOUSE,
July 21, 1997.

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Rules and Regulations

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 245 and 274a

[INS No. 1676–94]

RIN 1115–AD83

Adjustment of Status to That of Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This second interim rule responds to public comments on the first interim rule and also implements various provisions of the Illegal Immigration Reform and Immigration Responsibility Act of 1996. This rule amends the Immigration and Naturalization Service regulations to reflect the new surcharge required of certain persons in the United States who are seeking to apply for adjustment of status pursuant to section 245(i) of the Immigration and Nationality Act. This rule also amends the list of persons prohibited from applying for adjustment of status by adding two new categories that were created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. In addition, this interim regulation enables the Immigration and Naturalization Service to complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997.

DATES: *Effective Date:* This rule is effective July 23, 1997.

Comment Date: Written comments must be submitted on or before September 22, 1997.

ADDRESSES: Written comments must be submitted, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, D.C. 20536. To ensure proper handling, please reference the INS number 1676–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Staff Officer, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, D.C. 20536, Telephone (202) 514–5014 or Lisa Rainville, Center Adjudications Officer, Vermont Service Center, Immigration and Naturalization Service, 75 Lower Welden Street, St. Albans, VT 05479–0001, Telephone (802) 527–3114.

SUPPLEMENTARY INFORMATION:

Background

Under the Immigration and Nationality Act (the ''Act''), an alien seeking to immigrate to the United States normally must obtain an immigrant visa at a United States embassy or consulate abroad. Section 245 of the Act, however, allows certain persons who are physically present in the United States to adjust status to that of lawful permanent resident. Section 245(a) of the Act limits eligibility for adjustment to aliens who have entered the United States after having been inspected and admitted or paroled by an immigration officer. Section 245(c) of the Act, in turn, bars the adjustment of most applicants who have been employed in the United States without authorization; who have not complied with the terms of their nonimmigrant visa; or who are among certain classes of nonimmigrants whose basis for admission precludes them from eligibility for adjustment of status. Many intending immigrants who were physically present in the United States and were ineligible for adjustment of status under the provisions of section 245(a) and 245(c) of the Act had been obliged to depart the United States to obtain immigrant visas and seek admission to the United States as lawful permanent residents. This resulted in an increased burden on United States consulates and embassies abroad. Additionally, aliens physically present in the United States who sought lawful permanent resident status were required to incur the expense and inconvenience of applying for an immigrant visa at a United States consulate or embassy abroad.

Public Law 103–317

To address these problems, Congress enacted section 506(b) of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Pub. L. 103–317 (August 26, 1994). Section 506(b) of Pub. L. 103–317 added a new section 245(i) to the Act which allows certain persons already in the United States to adjust status, despite the provisions of sections 245 (a) and (c) of the Act, upon payment of a fee in addition to the base filing fee for an adjustment of status application. Section 245(i) of the Act does not, however, waive other grounds of ineligibility enumerated elsewhere in section 245. The provisions of section 245(i) apply only to applications filed on or after October 1, 1994, and before October 1, 1997. *See* section 506(c) of Pub. L. 103–317. It should be emphasized that, despite enactment of section 245(i) of the Act, adjustment of status remains the exception, and not the rule, to the normal process of immigrant visa issuance. *See* 59 FR 51091–100.

On October 7, 1994, the Immigration and Naturalization Service (the ''Service'') published an interim rule with request for comments which established procedures for filing for adjustment of status pursuant to the provisions of section 245(i) of the Act. *See* 59 FR 51091–100. The interim rule took effective retroactively on October 1, 1994. Interested persons were invited to submit written comments on or before December 6, 1994. After publication of the interim rule on October 7, 1994, the Service received seven written comments during the comment period.

On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the ''IIRIRA'') into law. Among other changes, effective September 30, 1996, the IIRIRA established two new groups of aliens who are ineligible to adjust status under section 245(a) of the Act. The present rule, which contains regulatory changes to 8 CFR part 245 mandated by statutory amendments to sections 245(c) and 245(i) of the Act, is being published as a second interim rule to provide the public an opportunity to comment on the Service's interpretation of the new

law as well as on the provisions of the first interim rule that remain in effect.

Comments

The following discussions summarizes the issues which were raised by the commenters in response to publication of the first interim rule and explains the Service's position on those issues.

Conclusion of Application Period

One commenter asserted that the provisions of section 245(i) should apply to all applications properly filed before October 1, 1997, rather than only those applications which have been adjudicated by that date. Upon further consideration of this issue, the Service is persuaded that the commenter's position represents the best reading of these statutory provisions. The first interim regulation provided that, in order to meet the October 1, 1997, sunset date provided in section 506(c) of Pub. L. 103–317, section 245(i) applications should be filed at the earliest possible date to ensure complete processing prior to October 1, 1997. Read together, sections 245(i)(1) of the Act and 506(c) of Pub. L. 103–317, however, provide that an alien may apply to the Attorney General for adjustment of status under section 245(i) through September 30, 1997, and that the Attorney General ''may'' accept such an adjustment application through September 30, 1997. Section 245(i)(2) of the Act and section 506(c) of Pub. L. 103–317, in turn, specifically provide that the Attorney General may adjust an alien's status under section 245(i) of the Act only through September 30, 1997. Finally, section 506(d) of Pub. L. 103–317, requires the Service to conduct full fingerprint identification checks through the FBI for all individuals over 16 years of age who adjust status pursuant to section 245(i) of the Act.

In drafting the first interim regulation, the Service adopted the position that, based on the language of section 245(i)(2) of the Act and section 506(c) of Pub. L. 103–317, its authority to complete processing of any properly filed section 245(i) adjustment application would lapse on the October 1, 1997, sunset date. If left to stand, the first interim rule, in effect, would have precluded an alien from filing an application for adjustment of status through September 30, 1997, as is mandated in section 506(c) of Pub. L. 103–317, since the normal period of time necessary to complete full fingerprint identification checks on adjustment applicants may be 120 days or more. Upon further consideration, the Service now believes that the first interim rule is incompatible with the language of section 506(c) of Pub. L. 103–317 and section 245(i)(1) of the Act, which specifically permit an alien to apply for adjustment under section 245(i) through September 30, 1997. In making this determination, the Service is aware that, upon expiration of section 245(i)(2) of the Act on October 1, 1997, the Attorney General no longer will have the explicit authority to adjust an alien's status under section 245(i) of the Act. We nevertheless conclude that, based on the statutory scheme, Congress gave the Service the implicit authority to complete processing of all adjustment applications which were properly filed in accordance with section 245(i)(1) of the Act prior to the October 1, 1997, sunset. Not only was Congress aware that the Service, as a practical matter, is unable to complete processing of an application for adjustment of status on the date such application is received, but Congress also specifically mandated that the Service not act upon section 245(i) applications until a ''full'' background check has been conducted on the adjustment applicant. *See* section 506(d) of Pub. L. 103–317. Clearly, Congress did not intend to permit the filing of what would in effect be a meaningless section 245(i) adjustment application, accompanied with, in most cases, a substantial additional surcharge, which the Service would be required to deny soon thereafter because of the passage of the October 1, 1997, sunset date.

In short, this second interim rule reconciles any potential inconsistency between sections 245 (i)(1) and (i)(2) of the Act based on section 506(c) of Pub. L. 103–317 by specifically permitting the filing of section 245(i) applications through September 30, 1997, in accordance with section 245(i)(1) of the Act, while recognizing the Service's implicit authority to complete processing of such properly filed applications, even when that processing takes place after September 30, 1997. This second interim rule therefore revises 8 CFR 245.10(c) to allow the filing of adjustment applications pursuant to section 245(i) of the Act through September 30, 1997.

Applications Submitted to the Service After September 30, 1997

The statutory authority for granting benefits, as well as for collecting the surcharge, under section 245(i) of the Act ends on September 30, 1997. *See* section 506(c) of Pub. L. 103–317. By law, the Service may not a grant the benefits of section 245(i) of the Act to aliens who attempt to file a new application for adjustment of status under that subsection after September 30, 1997. All applications for adjustment of status filed pursuant to section 245 of the Act which are submitted after September 30, 1997, must be adjudicated pursuant to section 245(a) of the Act. Therefore, in cases where an applicant attempts to file a new section 245(i) adjustment after September 30, 1997, the Service will retain the base filing fee, return any surcharge, and adjudicate the application pursuant to section 245(a) of the Act.

Readjustment of Lawful Permanent Residents

One commenter noted the language in the preamble to the first interim regulation which states that (a) person who is currently a lawful permanent resident * * * continues to be ineligible for adjustment.'' *See* 59 FR 51093. The commenter asserted that this statement was contrary to established case law and added that the statute does not preclude lawful permanent residents from adjusting status under section 245 of the Act. Contrary to this comment, a lawful permanent resident generally may not ''adjust'' to the same status he or she already holds. The Service recognizes, however, that there exists at least one limited exception to this general rule in the context of an alien in deportation proceedings. See Matter of Gabryelsky, 20 I & Dec. 750 (BIA 1993) (allowing an alien to ''bootstrap'' eligibility for relief under section 245 and 212(c) of the Act). This should not be construed, however, to mean that any lawful permanent resident, whether or not in proceedings, may apply for adjustment of status under section 245 of the Act. First, the language of the statute itself makes it clear that there is no absolute right to adjustment of status. On the contrary, the Attorney General ''may'' adjust an alien's status ''to'' that of an alien lawfully admitted for permanent residence. It is, therefore, within the Attorney General's discretion to determine if it is appropriate to grant such status. In this regard, the Service believes it would be an inappropriate use of its limited resources to accord the same privilege, i.e., permanent residence, to an alien currently holding permanent resident status. In any event, an alien, if otherwise eligible, may change the basis of his or her permanent residence by abandoning such status and obtaining an immigrant visa abroad. Finally, we note that the reference in section 245(a) of adjustment ''to that of an alien lawfully admitted for permanent residence'' clearly demonstrates that Congress intended aliens to adjust from a different

immigration status. Accordingly, the Service will not adopt the commenter's suggestion.

Family Unity

Section 245(i) of the Act and 8 CFR 245.10(b) provide that spouses and unmarried children who are under the age of 21 of aliens who were legalized and special agricultural workers programs are exempt from payment of the additional sum, provided those individuals were qualified for, and had properly applied for, benefits under the Family Unity program. *See* section 301 of the Immigration Act of 1990, Pub. L. 101–649. One commenter suggested that the first interim rule should clearly specify that persons whose voluntary departure status under the Family Unity program had expired are covered by this provisions. The Service agrees that the statute and regulations require only that such persons are qualified for and have applied for Family Unity benefits. Those persons whose voluntary departure status under the Family Unity program has expired remain exempt from paying the additional sum specified in 8 CFR 245.10(b). It is, therefore, not necessary to amend the regulation.

The same commenter contends that persons eligible for benefits under the Family Unity program who had not yet filed Form I–817, Application for Voluntary Departure under the Family Unity Program, should be allowed to apply for that program concurrently with their application for adjustment of status. The commenter asserted that requiring applicants to file Form I–817 and obtain a receipt before applying the adjustment of status is inefficient for the Service and inconvenient for applicants.

The statutory language limits the exemption of payment of the additional sum of those applicants ''who * * * applied for benefits under'' the Family Unity program. This explicit use of the past tense precludes consideration of persons who have yet to file and be determined eligible for benefits under the Family Unity Program. Accordingly, there has been no change to the rule in response to this comment.

Another commenter disagreed with the language of 8 CFR 245.10(b)(3), which exempts from payment of the additional sum an applicant who is ''(t)he child of a legalized alien, is unmarried and less than 21 years of age'' and who was qualified for and had properly applied for benefits under the Family Unity program. The commenter asserted that this definition is too restrictive, contending that section 245(i)(1)(i) of the Act extends benefits to any applicant who ''as of May 5, 1988, was the unmarried child (under the age of 21)'' of legalized alien and had applied for benefits under the Family Unity program.

The Service disagrees with the commenter for the following reasons. The Service recognizes that Congress, in establishing the Family Unity program under section 301 of the Immigration Act of 1990 (IMMACT 90), intended, in part, to ensure that families of legalized aliens are able to remain together until such time as their dependents become statutorily eligible to apply for permanent resident status in the United States. In particular, Congress recognized that such dependents must wait a significant period of time in order for a visa number to become available. Section 301 of IMMACT 90, however, did not address the question of what fee such person must pay in order to apply for adjustment of status. The fee issue, instead, was specifically addressed in section 245(i)(1) of the Act, which clearly provides that the alien must have been an unmarried child both in 1988 as well as at the time he or she applies for permanent resident status in order to be exempt from payment of the surcharge. Further, requiring payment of the surcharge from offspring over the age of 21 years if they wish to remain permanently in this country is in no way contrary to Congress' intent to ensure family unification. For this reason, the Service cannot accept the commenter's suggestion, and will continue to follow the plain language of section 245(i)(1)(i) of the Act.

Payment of Additional Sum

One commenter asserted that the first interim regulation required applicants to submit a sum in excess of that required by statute. The first interim regulation requires applicants to submit the standard application fee plus an additional sum equal to five times that fee. The commenter contended that section 245(i) requires applicants to submit the ''penalty'' portion of the filing fee in lieu of the standard filing fee for adjustment of status applications.

Section 245(i)(1)(b)(iii) of the Act states that ''(t)he sum specified herein shall be *in addition to* the fee normally required for the processing of an application under this section'' (emphasis added). The placement of this sentence within a subparagraph of the statute may have caused some confusion. Nonetheless, the statute refers to this additional amount not as a ''fee'' but as a ''sum'' which is to accompany the application and fee under section 245(i). The Service has no discretion to alter this statutory provision.

One commenter objected to 8 CFR 103.7(c)(1), which states that ''[t]he payment of the additional sum . . . may not be waived except as directed in section 245(i).'' The commenter contended that section 245(i) of the Act does not address the issue of fee waivers and argued that the Service should take ''the standard regulatory approach to fees'' found in 8 CFR 103.7(c). Section 245(i) of the Act, however, specifically lists which categories of applicants are not required to submit the additional sum. Unlike the case of other types of petitions and applications filed with the Service, under the plain language of section 245(i) of the Act, the additional sum is specifically mandated by statute. Absent specific statutory authority to waive the surcharge, the Service, therefore, may not waive the additional sum. Accordingly, the Service will not adopt the commenter's suggestion.

Technical Revision to 8 CFR 103.7(c)(1)

This second interim regulation modifies the final sentence of 8 CFR 103.7(c)(1) by removing the words ''except as directed in section 245(i) of the Act.'' As one commenter noted, the first regulation is misleading in that it implies that a statutory exemption of the surcharge equates to a waiver of payment of such surcharge. This technical change clarifies that, under the plain language of the statute, persons listed in section 245(i)(1) (i) through (iii) of the Act are exempt from payment of the surcharge, and the Service lacks discretionary authority to waive the surcharge. Since, to date, the Service has not required payment of the surcharge from the individuals listed in section 245(i)(1) (i) through (iii), this technical change, as a practical matter, will have no adverse effect on such persons.

Clarification of Instructions to Supplement A to Form I–485

One of the commenters indicated that the instructions which accompany Supplement A to Form I–485 ''seem to suggest that an applicant must be the approved beneficiary of a valid unexpired visa petition in order to file the form.'' Supplement A clearly does not limit eligibility for adjustment of status to an applicant who is the beneficiary of an approved immigrant visa petition. The instructions to the form specify only that an applicant ''have an immediately available immigrant visa number.'' This language echoes section 245(i)(2)(B) of the Act, which requires ''an immigrant visa [to be] immediately available to the alien at the time the application is filed.'' Furthermore, apart from its instructions,

Supplement A lists a broad spectrum of grounds for eligibility for adjustment of status. Accordingly, no change has been made to the rule as a result of this recommendation.

Interview Waivers

One commenter requested that the Service incorporate language regarding interview waivers into the regulation. However, as the same commenter noted, 8 CFR 245.6 currently allows for a waiver of the interview for adjustment of status applications. Applications filed under section 245(i) of the Act are adjudicated in accordance with the regulations at 8 CFR part 245, which already contain provisions authorizing immigration officers to waive the interview under certain specified circumstances. Further regulatory language relating to interview waivers would be redundant. Accordingly, the Service will not adopt the commenter's suggestion.

Adjustment as a Means of Relief From Deportation

One commenter urged the Service to clarify that prospective immigrants who qualify for adjustment under section 245(i) may file such an application while they are in deportation proceedings. (While no new deportation cases may be brought after March 31, 1997, section 309(c) of the IIRIRA permits the continuation of deportation proceedings initiated prior to April 1, 1997.) However, under 8 CFR 242.17(a), respondents in deportation proceedings are already permitted to apply for adjustment of status under section 245 of the Act. Additional regulatory language to that effect would, therefore, be redundant. Accordingly, the rule has not been changed in response to this recommendation. It should be noted that the Service published an interim rule on March 6, 1997, effective April 1, 1997, that implemented certain changes to the removal process resulting from the IIRIRA. *See* 62 FR 10312. The March 6, 1997, regulation provides for adjustment of status in certain circumstances, where appropriate, during removal proceedings.

Fingerprint Checks

One commenter noted that section 506(d) of Pub. L. 103–317 requires fingerprint checks for all applicants for adjustment of status under section 245(i) of the Act who are more than 16 years of age. The commenter suggested that this provision should be included in the regulations to avoid confusion. However, fingerprint checks are covered by 8 CFR 264.1, a regulation not covered by the present rulemaking. While this point is well taken, the Service intends to address this matter in a separate rulemaking. Accordingly, the regulation has not been changed as a result of this comment.

Pending Applications and the Chinese Student Protection Act

A number of commenters were concerned about the impact of the first interim regulation on individuals who applied for adjustment of status under the Chinese Student Protection Act (CSPA), as well as dependents of CSPA applicants. One commenter suggested that the regulations at 8 CFR 245.1 should be amended to remind Service officers that qualifying family members who are following to join immigrants who adjusted status under the CSPA retain the priority date of a CSPA principal. As the commenter observed, however, the issue of priority dates for late-arriving dependents of CSPA principals has already been addressed at 8 CFR 245.9(m). Because statutory and regulatory provisions are already in place for late-arriving dependents of CSPA applicants, there is no need to promulgate further regulations merely to refer interested parties to existing provisions.

Several commenters observed that the provisions of section 245(i) ''shall take effect on October 1, 1994.'' The commenters asserted that, because of this wording, the provisions of section 245(i) should apply not only to applications filed after October 1, 1994, but to any adjustment application pending on that date. They urged the Service to allow applicants for adjustment of status to file motions to reopen or reconsider under section 245(i) of the Act.

The language of section 245(i), however, clearly states that a prospective immigrant under this section ''may apply'' for adjustment of status. This wording is prospective and not retroactive. Because section 245(i) became effective on October 1, 1994, the plain language of the statute limits the application of section 245(i) to applications for adjustment of status filed on or after October 1, 1994. Therefore, the Service cannot apply the provisions of section 245(i) to applications filed prior to October 1, 1994, or to motions to reopen or reconsider such applications.

A number of these commenters argued that, although applicants who entered without inspection were ineligible for adjustment of status under the CSPA, the provisions of section 245(i) should apply retroactively to any CSPA application pending as of October 1, 1994. One commenter noted that, whole most aliens with pending adjustment of status applications could simply file a new application under section 245(i), CSPA applicants cannot file a new application because of the CSPA's statutory filing deadline of June 30, 1994. Another commenter urged the Service to reopen or reconsider denied CSPA applications under section 245(i) because ''[t]he INS unlawfully stopped advance paroles for Chinese nationals'' who had entered without inspection. As stated previously, the provisions of section 245(i) apply only to applications filed on or after October 1, 1994. Further, had Congress intended any special consideration for CSPA applications, such provisions would have been incorporated into the statute. Accordingly, the provisions of the rule have not been changed in response to these comments.

IIRIRA

Surcharge Increased by Congress

Section 376(a) of the IIRIRA increased the amount of the additional sum for applicants seeking the benefits of section 245(i) of the Act from five times the fee required for processing of applications under this section ($650) to $1,000. The regulations are, therefore, amended to reflect the change in the additional fee.

The new 245(i) surcharge in the amount of $1,000 applies to all applications properly filed with this Service on or after the end of the 90-day period beginning on the date of enactment. The section 245(i) fee increase, therefore, became effective on December 29, 1996, for applications for adjustment of status under section 245(i) of the Act which were properly filed in accordance with 8 CFR 103.2(a) on or after that date. Under new 8 CFR 245.10(f), if at any time during the pendency of the adjustment application, the application is determined to be subject to the section 245(i) surcharge, and the application is not accompanied by the required amount (i.e., base fee of $130 plus $1,000 surcharge), the Service will afford the alien an opportunity to amend the application in accordance with 8 CFR 245.10(d). If the alien elects to amend such an application, he or she will be credited for the $130 base filing fee that was submitted with the initial adjustment application and, therefore, will be required to submit only the $1,000 surcharge amount and Supplement A to Form I–485.

Section 245(c)(6) of the Act

Under the IIRIRA, Congress amended section 245(c)(6) of the Act by changing the reference to section 241(a)(4)(B) to

section 237(a)(4)(B) of the Act. Section 237(a)(4)(B) of the Act renders any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity, as defined in section 212(a)(3)(B)(iii) of the Act, ''deportable.'' Under section 245(c)(6), persons who are deportable under section 237(a)(4)(B) of the Act are ineligible to adjust status under section 245(a) of the Act. This second interim regulation reflects the position of the Service that any person who is deportable under section 237(a)(4)(B) of the Act is also ineligible to adjust status under section 245(i) of the Act.

New Section 245(c)(7) of the Act

Section 375 of the IIRIRA, which took effect on September 30, 1996, amended section 245(c) of the Act by adding two new groups of aliens to the list of those who are ineligible to adjust status under section 245(a) of the Act. The first group, described in new section 245(c)(7) of the Act, consists of any alien beneficiary of an employment-based immigrant visa petition who is not in a lawful nonimmigrant status at the time she or he applies for adjustment of status. In enacting new section 245(c)(7) of the Act, Congress changed preexisting law by rendering aliens who are legally permitted to remain in the United States, such as parolees, but who are not among the classes of nonimmigrants defined in section 101(a)(15) or other provisions of the Act, ineligible to adjust status under section 245(a) of the Act on the basis of an approved employment-based immigrant petition. This second interim rule amends 8 CFR 245.1(b) to add such aliens to the group of people currently ineligible for adjustment of status. It should be noted, however, that the section 245(c)(7) bar to adjustment does not apply to aliens who were in a lawful nonimmigrant status at the time they applied for adjustment of status, subsequently departed from the United States, and then reentered this country pursuant to an approved advance parole.

New Section 245(c)(8) of the Act

Section 375 of the IIRIRA also added a new section 245(c)(8) to the Act, which renders ''any alien who was employed while the alien was an unauthorized alien as defined in section 274A(h)(3) [of the Act] or who has otherwise violated the terms of a nonimmigrant visa'' ineligible to adjust status pursuant to section 245(a) of the Act. With respect to the employment of an alien at a particular time, section 274A(h)(3) of the Act defines the term ''unauthorized alien'' as an alien who is not either an alien lawfully admitted for permanent residence or authorized to be so employed under the Act or by the Attorney General.

Except as noted below with regard to immediate relatives and certain special immigrants, the Service interprets new section 245(c)(8) of the Act as rendering an alien ineligible to adjust status to permanent resident under section 245(a) of the Act if she or he at any time engaged in unauthorized employment or violated nonimmigrant status while physically present in the United States. This second interim rule amends 8 CFR 245.1(b) accordingly by adding any alien who has violated the terms of a nonimmigrant visa to the list of persons currently ineligible to adjust status under section 245(a) of the Act. In addition, since the statute does not state that the violation of the terms of a nonimmigrant visa or the unauthorized employment must have occurred during a particular time period, this rule similarly places no time restrictions on when such a violation must have occurred. For this reason, this rule provides that any such violation of the terms of a nonimmigrant visa or unauthorized employment, either before or after the filing of Form I–485, will render an alien ineligible to adjust status under section 245(a) of the Act. Thus, as described below, under new section 245(c)(8) of the Act, an alien seeking employment during the pendency of his or her adjustment application must fully comply with the requirements of section 274A of the Act and 8 CFR part 274a.

Clarification of the Term ''Otherwise Violated the Terms of a Nonimmigrant Visa'' in New Section 245(c)(8) of the Act

For purposes of section 245(c)(8) of the Act, an alien will not be deemed to have ''otherwise violated the terms of a nonimmigrant visa'' merely by filing an application for adjustment of status, provided that such filing was in accordance with 8 CFR 103.2(a) and occurred prior to the expiration of the alien's nonimmigrant status. Further, for purposes of section 245(c)(8) of the Act, an alien will not be deemed to have ''otherwise violated the terms of a nonimmigrant visa'' if: (a) The alien's failure to maintain status was through no fault of his or her own or for technical reasons, as defined in 8 CFR 245.1(d)(2); (b) the alien was granted a change of nonimmigrant status pursuant to 8 CFR 248.1(b); (c) the alien was granted an extension of nonimmigrant stay pursuant to current Operations Instructions 214.1 or any previous analogous Operations Instructions; (d) the alien was granted an extension of nonimmigrant stay based on a timely filed extension application which the Service approved after the alien's authorized nonimmigrant period of stay expired; or (e) the alien was granted reinstatement to student status pursuant to 8 CFR 214.2(f)(16) on the basis of circumstances beyond the student's control.

Clarification of the Term ''Unauthorized Alien'' in New Section 245(c)(8) of the Act

For purposes of section 245(c)(8) of the Act, an alien will not be deemed to be an ''authorized alien'' as defined in section 274A(h)(3) of the Act while his or her properly filed Form I–485 application is pending final adjudication, if the alien has otherwise obtained permission from the Service to engage in employment, or if the alien: (a) Has not previously engaged in unauthorized employment at any time; (b) was authorized, at the time of filing the adjustment application, to be employed by his or her current employer pursuant to a nonimmigrant classification permitting such employment; and (c) would otherwise have been authorized to continue employment had he or she not filed the application for adjustment of status. In all other cases, including those in which the alien's previously granted employment authorization expires during the pendency of the adjustment application, the adjustment applicant must await issuance of an employment authorization document (''EAD'') from the Service before he or she may lawfully engage in employment. For this reason, adjustment applicants are strongly urged to file a Form I–765 application on the basis of 8 CFR 274a.12(c)(9) concurrently or as soon as possible after filing the Form I–485 to avoid a lapse of employment authorization. Further, in all cases, if the district director or service center director denies the alien's application for adjustment of status, any employment authorization granted to the alien on the basis of the adjustment application will be subject to termination pursuant to 8 CFR 274a.14(b). Finally, as this second interim rule is limited to defining who is an ''unauthorized alien'' for purposes of new section 245(c)(8) of the Act, an alien who meets the above requirements must, like all other adjustment applicants, obtain advance parole in order to travel outside of the United States during the pendency of his or her adjustment application.

Immediate Relatives and Certain Special Immigrants Are Exempt From the Bar to Adjustment Under Section 245(c)(8) of the Act

By its terms, new section 245(c)(8) of the Act applies to ''any alien'' and does not exempt any individual or group of individuals from the bar to adjustment under section 245(a) of the Act. This provision, however, must be harmonized with section 245(c)(2) of the Act, which also addresses unauthorized employment and failure to maintain lawful status, but which exempts from its bar to adjustment immediate relatives, as defined in section 201(b) of the Act, or special immigrants, as defined in section 101(a)(27) (H), (I), (J), or (K) of the Act. Despite the reference to ''all aliens'' in new section 245(c)(8) of the Act, it is the position of the Service that the language of this new section does not supersede the more specific language of section 245(c)(2) of the Act. *See* 2B Sutherland Stat. Const. section 51.02 at p. 121 (where a conflict exists the more specific statute controls over the more general one). Under this second interim rule, therefore, immediate relatives as defined in section 201(b) or special immigrants described in section 101(a)(27) (H), (I), (J), or (K) of the Act who have at any time engaged in unauthorized employment or otherwise violated the terms of a nonimmigrant status continue to be eligible to adjust status under section 245(a) of the Act because of the explicit language to this effect in section 245(c)(2) of the Act. As is currently the case, such individuals are not required to pay the additional sum required for filing an adjustment application pursuant to section 245(i) of the Act. *See* 8 CFR 245.1(b). These persons are still required, however, to pay the base filing fee required of other adjustment applicants under section 245(a) of the Act. *See* 8 CFR part 103.7(b)(1).

Effect of New Ground of Inadmissibility 212(a)(6) on Section 245(i) of the Act

The IIRIRA added several new grounds of inadmissibility, including a new section 212(a)(6) of the Act, which became effective on April 1, 1997. Under new section 212(a)(6)(A) of the Act, with certain exceptions specified therein, aliens who are ''present in the United States without being admitted or paroled,'' will be inadmissible to the United States. All inadmissibility grounds are subject, however, to the general language in the first clause of section 212(a) of the Act: ''[e]xcept as otherwise provided in this Act.'' For the following reasons, it is the position of the Service that, despite the enactment of this new ground of inadmissibility, aliens who are physically present in the United States after having entered without inspection will continue to be eligible to apply for adjustment of status under section 245(i) of the Act through the September 30, 1997, sunset date for section 245(i). In making this determination, we note, as a preliminary matter, that the first clause of section 212(a) of the Act, unlike certain other sections of the Act, contains no requirement that another section of the Act *specifically* provide that an entrant without inspection is exempt from the new ground of inadmissibility. By contrast, in enacting other sections of the Act, when Congress has intended such specificity, it has expressly imposed this requirement. *See e.g.*, section 101(a)(38) of the Act (''except as otherwise specifically herein provided * * *''); section 245A(h)(1) of the Act (''[u]nless specifically provided by this section or other law''). In the absence of such a specificity requirement in the first clause of section 212(a) of the Act, the rules of statutory construction permit us to conclude, if otherwise warranted, that Congress intended otherwise eligible applicants who had entered without inspection to be ''admissible'' for the limited purpose of adjusting status under section 245(i) of the Act, even in the absence of specific language in section 245(i) referring to section 212(a)(6)(A) of the Act.

The Service finds ample additional evidence of Congress' intent to permit entrants without inspection to continue to apply for adjustment of status under section 245(i) of the Act after April 1, 1997. First, under the plain language of section 245(i)(1)(A) of the Act, aliens who are physically present in the United States who entered without inspection are specifically permitted to apply for adjustment of status. Section 245(i)(2)(A), of the Act, however, requires that such aliens be ''admissible'' to the United States. To deem such entrants without inspection ''inadmissible'' would render section 245(i)(1)(A) of the Act effectively superfluous, since it would preclude nearly all entrants without inspection from ever obtaining approval of such applications. On a similar note, since an applicant for adjustment of status is assimilated to the position of an applicant for admission, such a person must be ''admissible'' both at the time of application and at the time of being granted adjustment of status. *See* 8 CFR 245.10(a)(3) (alien ''may apply'' for adjustment under section 245(i) if not excludable); section 245(i)(2)(A) of the Act (alien must be ''admissible'' at time of adjustment). Since section 245(i)(1)(A) of the Act expressly permits entrants without inspection to apply for adjustment of status, Congress, in effect, has deemed such persons ''admissible'' for the single purpose of filing an adjustment application under section 245(i) of the Act. The Service does not believe that Congress, having thus invited such applications, intended to create the futile situation in which most entrants without inspection would be admissible solely for the purpose of filing an adjustment application, but would be precluded from ever being able to adjust status based on the same application. Finally, as a further indication of Congress' intent to preserve the status quo with respect to entrants without inspection, we note that Congress, in enacting the IIRIRA, amended other portions of section 245(i) of the Act but left standing 245(i)(1)(A) of the Act, which specifically authorizes those who entered without inspection to apply for adjustment under the terms of that subsection. *See* section 376 (a) and (b) of the IIRIRA.

General Effect of New Section 212(a)(9) of the Act on Adjustment of Status

This second interim regulation specifically provided that new section 212(a)(9) of the Act will not be a bar to adjustment of status for an alien who has not yet departed from the United States. This interpretation conforms to the plain language of the statue which requires that an alien must depart from the United States in order to become inadmissible under section 212(a)(9) of the Act. Such a person, however, if otherwise within the purview of section 212(a)(9) of the Act (for example, by virtue of having accumulated the specified periods of unlawful presence), will be deemed inadmissible under that section of the Act for purposes of adjustment of status if he or she has departed from the United States and subsequently reentered the United States by any means.

Effect of New Section 212(a)(9)(B) of the Act on Adjustment of Status

With certain exceptions, effective April 1, 1997, under new section 212 (a)(9)(B) of the Act, any alien, with the exception of a lawful resident, who has been ''unlawfully present'' in this country (e.g., present beyond the period of stay authorized by the Attorney General or present without being admitted or paroled) for a period of more than 180 days but less than 1 year, has voluntarily departed from the United States, and again seeks admission to this country within 3 years from the date of departure, will be

inadmissible to the United States. Similarly, an alien who has been unlawfully present in the United States for 1 year or more, departs from the United States, and again seeks admission to this country within 10 years of the date of such departure or removal, will be deemed inadmissible. In addition to the specific exceptions set forth under new section 212(a)(9)(B) of the Act, no period prior to April 1, 1997, may be counted toward the period of ''unlawful presence.'' *See* section 301(b)(3) of the IIRIRA. Thus, the earliest possible date an alien could be deemed to be inadmissible under section 212(a)(9)(B) of the Act would be September 28, 1997. As noted above, otherwise admissible persons who have been ''unlawfully present'' for any period of time while in this country are generally ineligible to adjust their status under section 245(a) of the Act. Under section 245(i) of the Act, however, such persons, if admissible, are eligible to apply for adjustments of status upon payment, in most cases, of a substantial surcharge fee. The Service intends to address the issues relating to section 212(a)(9) of the Act in a separate proposed rulemaking.

Good Cause Exception

The Service's implementation of this rule as a second interim rule, with provisions for post-promulgation public comments, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(3)(B), (d)(3). *See Animal Legal Defense Fund* v. *Quigg*, 932 F.2d 920 (Fed. Cir. 1991). The immediate implementation of this second interim rule without prior notice and comment is necessary to implement statutory changes which have already gone into effect. Consequently, there is insufficient time to provide pre-publication notice and comment. The Service will fully consider all comments submitted during the comment period. The Service notes that this second interim rule continues to allow certain persons who were previously ineligible for adjustment of status to obtain lawful permanent residence without having to incur the high costs of travel abroad.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. By temporarily removing certain restrictions on eligibility for adjustment of status in accordance with the statute, the rule will eliminate inconvenience to a number of individuals currently in the United States who otherwise would be required to incur significant monetary expenses by traveling abroad to apply for an immigrant visa at a United States consulate or embassy. This second interim rule will have no effect on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule were previously approved for use by the Office of Management and Budget (OMB). The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of Information, Privacy, Reporting and recordkeeping, Surety bonds.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Aliens, Immigration, employment authorization and employee requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. In § 103.7(b)(1), the entry for ''Supplement A to Form I–485'' is amended by revising the fee of ''$650.00'' to read: ''$1,000''.

3. In § 103.7, paragraph (c)(1) is amended in the last sentence by removing the phrase ''except as directed in section 245(i) of the Act''.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

4. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

5. Section 245.1 is amended by:

a. Removing ''.'' at the end of paragraph (b)(7), and replacing it with a '';'';

b. Removing the ''.'' at the end of paragraph (b)(8), and replacing it with a '';''; and by adding paragraphs (b)(9) and (b)(10), to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(9) Any alien who seeks adjustment of status pursuant to an employment-based immigrant visa petition under section 203(b) of the Act and who is not maintaining a lawful nonimmigrant status at the time he or she files an application for adjustment of status; and

(10) Any alien who was ever employed in the United States without the authorization of the Service or who has otherwise at any time violated the terms of his or her admission to the United States as a nonimmigrant, except an alien who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H), (I), (J), or (K) of the Act. For purposes of this paragraph, an alien who meets the requirements of § 274a.12(c)(9) of this chapter shall not be deemed to have engaged in unauthorized employment during the pendency of his or her adjustment application.

* * * * *

6. Section 245.10 is amended by:

a. Revising paragraph (a)(6);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(3);

d. Revising paragraphs (c), (d) and (e); and by

e. Adding new paragraphs (f) and (g), to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

(a) * * *

(6) Pays an additional sum of $1,000, unless payment of the additional sum is not required under section 245(i) of the Act; and

* * * * *

(b) *Payment of additional sum.* An adjustment applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment application filing fee as specified in § 103.7(b)(1) of this chapter. Each application submitted to the Service under the provisions of section 245(i) of the Act on or after October 1, 1994, and before December 29, 1996, must be submitted with an additional sum of $650. Each application submitted to the Service under the provisions of section 245(i) of the Act on or after December 29, 1996, must be submitted with an additional sum of $1,000. If a determination is made by an officer of the Service on or after December 29, 1996, that an applicant is subject to section 245(i) of the Act, and the Form I–485 is not accompanied by Supplement A to Form I–485 and, if required by section 245(i), the additional sum of $1,000, the applicant will be afforded the opportunity to amend the application by submitting Supplement A, the additional sum of $1,000, if required, and any other required documentation. However, an applicant filing under the provisions of section 245(i) of the Act is not required to pay the additional sum if, at the time the application for adjustment of status is filed, the alien is:

* * * * *

(3) The child of a legalized alien, is unmarried and less than 21 years of age, qualifies for and has filed Form I–817, and submits a copy of his or her receipt of approval notice for filing Form I–817. Such an alien must pay the additional sum if he or she has reached the age of 21 years at the time of filing for adjustment of status. Such an alien must meet all other conditions for adjustment of status contained in the Act and in this chapter.

(c) *Application period.* The Service may not approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either before October 1, 1994, or after September 30, 1997. If an alien attempts to file an adjustment of status application under the provisions of section 245(i) after September 30, 1997, the Service will accept the application and base filing fee, as set forth in § 103.7(b)(1) of this chapter, return the additional sum of $1,000 to the alien, and adjudicate the application pursuant to section 245(a) of the Act. If the alien, in such a case, is not eligible for adjustment of status, the Service will issue a written notice advising the alien of the denial of the application for adjustment of status.

(d) *Adjustment application filed on or after October 1, 1994, and before October 1, 1997, without Supplement A to Form I–485 and additional sum.* An adjustment of status applicant will be allowed the opportunity to amend an adjustment of status application filed in accordance with § 103.2 of this chapter on or after October 1, 1994, and before October 1, 1997, in order to request consideration under the provisions of section 245(i) of the Act, if it appears that the alien is not otherwise ineligible for adjustment of status. The Service shall notify the applicant in writing of the Service's intent to deny the adjustment of status application, and any other requests for benefits which derive from the adjustment application, unless supplement A to Form I–485 and any required additional sum is filed within 30 days of the date of the notice.

(e) *Applications for Adjustment of Status filed before October 1, 1994.* The provisions of section 245(i) of the Act shall not apply to an application for adjustment of status that was filed before October 1, 1994. The provisions of section 245(i) of the Act also shall not apply to a motion to reopen or reconsider an application for adjustment of status if the application for adjustment of status was filed before October 1, 1994. An applicant whose pre-October 1, 1994, application for adjustment of status has been denied may file a new application for adjustment of status pursuant to section 245(i) of the Act on or after October 1, 1994, and before October 1, 1997, provided that such new application is accompanied by: the required fee; Supplement A to Form I–485; and additional sum required by section 245(i) of the Act; and all other required initial and additional evidence.

(f) *Completion of processing of pending applications.* An application for adjustment of status filed subsequent to September 30, 1994, and prior to October 1, 1997, shall be adjudicated to completion by an officer of the Service, regardless of whether the final decision is made after September 30, 1997. The provisions of paragraph (d) of this section regarding amended applications shall apply to all such applications. The Service may consider a motion to reopen or reconsider an application for adjustment of status on the basis of section 245(i) of the Act only if:

(1) The application for adjustment of status was filed on or after October 1, 1994, and before October 1, 1997, and

(2) Prior to October 1, 1997, the applicant submitted Supplement A to Form I–485, any additional sum required by section 245(i), and any other required documentation.

(g) *Aliens deportable under section 237(a)(4)(B) of the Act are ineligible to adjust status.* Section 237(a)(4)(B) of the Act renders any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity, as defined in section 212(a)(3)(B)(iii) of the Act, deportable. Under section 245(c)(6) of the Act, persons who are deportable under section 237(a)(4)(B) of the Act are ineligible to adjust status under section 245(a) of the Act. Any person who is deportable under section 237(a)(4)(B) of

the Act is also ineligible to adjust status under section 245(i) of the Act.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

7. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

8. Section 274a.12 is amended by:

a. Removing the ';'' at the end of paragraph (c)(9) and replacing it with a ''.''; and by

b. Adding two new sentences at the end of the paragraph (c)(9), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(9) * * * For purposes of section 245(c)(8) of the Act, an alien will not be deemed to be an ''unauthorized alien'' as defined in section 274A(h)(3) of the Act while his or her properly filed Form I–485 application is pending final adjudication, if the alien has otherwise obtained permission from the Service pursuant to 8 CFR 274a.12 to engage in employment, or if the alien had been granted employment authorization prior to the filing of the adjustment application and such authorization does not expire during the pendency of the adjustment application. Upon meeting these conditions, the adjustment applicant need not file an application for employment authorization to continue employment during the period described in the preceding sentence;

* * * * *

Dated: June 15, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–19242 Filed 7–22–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–13; Amendment 39–10084; AD 97–15–10]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Garrett Engine Division and Garrett Turbine Engine Company) TPE331 series turboprop engines equipped with Woodward fuel controls, that requires revising the applicable Emergency Procedures or Abnormal Procedures Section of the applicable Federal Aviation Administration (FAA)-approved Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH) to include a paragraph relating to a non-responsive power lever. In addition, this AD requires replacing or reworking orifice fittings and restrictors, which would constitute terminating action to the requirement to revise the applicable AFM. This amendment is prompted by reports of occasional icing of the inlet Pt2 sensor, which can produce an erroneous (high) pressure signal to the fuel control, causing little or no response to power lever movement. The actions specified by this AD are intended to prevent a non-responsive power lever and lack of control of engine power.

DATES: Effective September 22, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 22, 1997.

ADDRESSES: The service information referenced in this AD 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 Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246; fax (562) 627–5210.

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 AlliedSignal Inc. TPE331 series turboprop engines equipped with Woodward fuel controls was published in the **Federal Register** on October 3, 1996 (61 FR 51618). That action proposed to require revising the Abnormal Procedures or Emergency Procedures Section of the applicable Federal Aviation Administration (FAA)-approved Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH) to include a paragraph relating to a non-responsive power lever. In addition, the notice proposed requiring replacing orifice fittings and reworking restrictors, which would constitute terminating action to the requirement to revise the applicable AFM or POH.

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

The commenter states that the Ayres S2R series aircraft should be removed from the AD applicability. The commenter states that the Ayres aircraft models are certified for Visual Flight Rules (VFR) operations at 12,000 feet or below, and are not normally operated in the altitude and temperature environment described in the AD. In addition, the engine has no anti-ice capability installed in this airplane. Also, the commenter is not aware of any reports of ''no response to power lever movement'' regarding this airplane. The FAA does not concur. First, the AD will apply to all TPE331–3, –5, –6, –10, –11, and –12 engines equipped with Woodward fuel controls, regardless of what aircraft those engines are installed on. The list of aircraft is provided for informational purposes only and is not an exclusive listing of aircraft on which operators might find the affected engines. In addition, the FAA is aware that some aircraft may be configured without anti-ice capability, and, therefore, no action would be required under paragraph (a), which addresses engines installed on aircraft with engine inlet ice protection. However, the FAA considers engines without engine anti-ice capability within the scope of the unsafe condition described in this AD and therefore, must be modified in accordance with paragraph (b) or (c) of the AD.

Also, the FAA has considered that no reports were submitted regarding ''no response to power lever movement'' for the Ayres series aircraft and that the maximum operating altitude for these aircraft is 12,000 feet. Even though ice blockage of the PT2 sensor and pressure signal increase is an infrequent phenomena and may be influenced by engine installation, flight operation, and environmental factors, the FAA has decided to implement the engine orifice fitting and restrictor modifications based on engine design similarity and the possibility that the sensor can ice up at lower altitudes in clear air given the right combination of temperature, relative humidity and airspeed. Therefore, the Ayres series aircraft will remain in the AD applicability.

The FAA has determined that the paragraphs (b) and (c) of the compliance section might be read ambiguously and that both paragraphs would have to be complied with when the intent is that engines affected by AlliedSignal Aerospace Service Bulletin (SB) No. TPE331–73–0235, dated July 28, 1995, must comply with paragraph (b) and engines affected by AlliedSignal Aerospace SB No. TPE331–73–0236, dated July 28, 1995, must comply with paragraph (c). The FAA has revised the compliance section of this final rule accordingly to clear up the possible ambiguity.

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

There are approximately 9,438 engines of the affected design in the worldwide fleet. The FAA estimates that 4,700 engines installed on aircraft of U.S. registry will be affected by this AD. The FAA estimates that 2,760 engines will need modification in accordance with AlliedSignal Aerospace SB No. TPE331–73–0236, dated July 28, 1995, that it will take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $80 per engine.

In addition, the FAA estimates that 1,240 engines will need modification in accordance with AlliedSignal Aerospace SB No. TPE331–73–0235, dated July 28, 1995, that it will take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $80 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $874,400.

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:

97–15–10 AlliedSignal Inc.: Amendment 39–10084. Docket 96–ANE–13.

Applicability: AlliedSignal Inc. (formerly Garrett Engine Division and Garrett Turbine Engine Company) TPE331–3, –5, –6, –10, –11, –12 series turboprop engines equipped with Woodward fuel controls, installed on but not limited to the following aircraft: Ayres S2R–G5, S2R–G6, and S2R–G10; Beech Model B100; Construcciones Aeronauticas, S.A. (CASA) C–212 series; Dornier 228 series; Fairchild SA226 and SA227 series; Jetstream 3101 and 3201 series; Mitsubishi MU–2B series (MU–2 series); Short Brothers plc Model SC–7 Skyvan Series 3; Twin Commander Aircraft Corp. 680, 690 and 695 series.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a non-responsive power lever and lack of control of engine power, accomplish the following:

(a) Within 30 days after the effective date of this AD, for aircraft equipped with engine inlet ice protection, revise the applicable Emergency Procedures or Abnormal Procedures Section of the applicable Federal Aviation Administration (FAA)-approved Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH) to include the following paragraph relating to a non-responsive power lever. This may be accomplished by inserting a copy of this AD in the AFM or POH:

''NON-RESPONSIVE POWER LEVER: If a lack of response to the power lever is observed, turn ON the ignition and engine anti-ice for both engines. After the condition has cleared and normal operation is observed, which occurs in approximately three minutes, anti-ice and ignition can be turned OFF.''

(b) For engine models TPE331–3U–303G, –3UW–303G, –3U–304G, and engine series TPE331–10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12UA, –12UAR, and –12UHR, within 120 days after the effective date of this AD, or at next removal of the Pt2 sensor, whichever occurs first, replace orifice fittings and replace or rework restrictors in accordance with the Accomplishment Instructions of AlliedSignal Aerospace Service Bulletin (SB) No. TPE331–73–0235, dated July 28, 1995. Replacing the orifice fittings and replacing or reworking the inlet sensor Ps3 restrictor, constitutes terminating action to the AFM or POH revision requirement stated in paragraph (a) of this AD.

(c) For engine model TPE331–3U–303V and engine series TPE331–5, –5A, –5AB, –5B, –6, –6A, –10, –10GP, –10GT, –10P, –10R, and –10T, within 120 days after the effective date of this AD, or at next removal of the Pt2 sensor, whichever occurs first, replace orifice fittings in accordance with the Accomplishment Instructions of AlliedSignal Aerospace SB No. TPE331–73–0236, dated July 28, 1995. Replacing the orifice fittings constitutes terminating action to the AFM or POH revision requirement stated in paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests 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.

(e) Special flight permits may be issued in accordance with §§ 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.

(f) The actions required by this AD shall be done in accordance with the following AlliedSignal Aerospace SBs:

Document No.	Pages	Date
TPE331–73–0235.	1–10	July 28, 1995.
Total	10	
TPE331–73–0236.	1–8	July 28, 1995.
Total	8	

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 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. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 22, 1997.

Issued in Burlington, Massachusetts, on July 10, 1997.

Ronald L. Vavruska,

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

[FR Doc. 97–19267 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–03–AD; Amendment 39–10086; AD 97–15–12]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft- und Raumfahrt, Model G 109 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Burkhart Grob, Luft- und Raumfahrt (Grob) Model G 109 sailplanes. This action requires installing a damper and new bell crank lever on the rudder, in addition to adjusting the weight and balance of the sailplane, to correct the tendency of flutter at specific excitation frequencies. For those Grob Model G 109 sailplanes that have previously accomplished this installation, a modification to the damper and bell crank lever, and adjustment to the weight and balance is required. These actions are prompted by the discovery of rudder vibration problems during testing of two Grob Model G 109 sailplanes. The actions specified by this AD are intended to prevent vibration of the rudder, which could result in structural damage and eventual loss of control of the sailplane.

DATES: Effective September 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft- und Raumfahrt, D–86874 Mattsies, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106, telephone (816) 426–6932, and facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob Model G 109 sailplanes was published in the **Federal Register** on August 30, 1996 (61 FR 45912). The action proposed to require installing a rudder damper and a new rudder bell crank lever in the controls and adjusting the weight and balance; or modifying the rudder damper and bell crank lever, in addition to adjusting the weight and balance of the sailplane.

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

Related Service Information

Accomplishment of the proposed actions would be in accordance with Grob Service Bulletin (SB) TM 817–38, dated July 8, 1993, Grob SB 817–38/2, dated March 31, 1995, Grob Installation Instructions No. 817–38/1 for Service Bulletin 817–38/2, dated March 31, 1995, Grob Installation Instructions 817–38/2 for Service Bulletin/2, dated March 31, 1995.

The FAA's Determination

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

Determination of Compliance Time

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the affected sailplanes have a rudder damper and a new rudder bell crank lever installed within a reasonable amount of time, the FAA is requiring a compliance time of 6 calender months.

Cost Impact

The FAA estimates that 34 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per sailplane to accomplish these actions, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,000 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $50,320. Grob has informed the FAA that no parts have been distributed to equip any sailplane in the United States. The FAA has no way of determining how many owners/operators may have incorporated these actions on their sailplanes.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–15–12. Burkhart Grob, Luft-Und Raumfahrt: Amendment 39–10086; Docket No. 95–CE–03–AD.

Applicability: Model G 109 sailplanes (serial numbers 6001 through 6159), certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes 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 within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent vibration of the rudder, which could result in structural damage and eventual loss of control of the sailplane, accomplish the following:

(a) For sailplanes that have been modified in accordance with Grob Installation Instructions No. 817–38, dated October 25, 1994, per Grob Service Bulletin (SB) TM 817–38, dated July 8, 1993, modify the damper unit and the rudder bell crank lever in accordance with Grob Installation Instructions No. 817–38/1, dated March 31, 1995, per Grob SB 817–38/2, dated March 31, 1995.

(b) For sailplanes that have not been modified in accordance with Grob Installation Instructions No. 817–38, install a new damper unit and rudder bell crank lever in accordance with Grob Installation Instructions 817–38/2 dated March 31, 1995, per Grob SB 817–38/2, dated March 31, 1995.

(c) For all affected sailplanes, re-calculate the weight and balance data in accordance with the Weight and Balance section in Grob SB 817–38/2, dated March 31, 1995.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) The modifications and installations required by this AD shall be done in accordance with GROB, Luft- und Raumfahrt GROB G 109 Installation Instructions No. 817–38 for Service Bulletin TM 817–38, dated October 25, 1994; GROB, Luft- und Raumfahrt GROB G 109 Service Bulletin TM 817–38, dated July 8, 1993; GROB, Luft- und Raumfahrt GROB G 109 Installation Instructions No. 817–38/1 for Service Bulletin 817–38/2, dated March 31, 1995; GROB, Luft- und Raumfahrt GROB G 109 Installation Instructions No. 817–38/2 for Service Bulletin 817–38/2, dated March 31, 1995; and GROB, Luft- und Raumfahrt GROB G 109 Service Bulletin 817–38/2, dated March 31, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this document may be obtained Burkhart Grob Luft- und Raumfahrt, D–86874 Mattsies, Germany. Copies of this document may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10086) becomes effective on September 19, 1997.

Issued in Kansas City, Missouri, on July 16, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19266 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–34–AD; Amendment 39–10042; AD 97–11–13]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–11–13, which was published in the **Federal Register** on May 29, 1997 (62 FR 28999), and concerns Fairchild Aircraft SA226 and SA227 series airplanes. The date of Fairchild Service Bulletin (SB) 227–24–008 is incorrectly referenced in paragraph (a) of this AD. All other reference is correct. The AD currently requires modifying the electrical power generation system. This action corrects the AD to reflect the right date for Fairchild SB 227–24–008 throughout the entire document.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid D. Knox, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5190; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

On May 22, 1997, the FAA issued AD 97–11–13, Amendment 39–10042 (62 FR 28999, May 29, 1997), which applies to Fairchild Aircraft SA226 and SA227 series airplanes. This AD requires modifying the electrical power generation system. Accomplishment of the proposed modifications as specified in the NPRM would be in accordance with the following service bulletins, as applicable:

—Fairchild Service Bulletin (SB) 226–24–027, Issued: May 19, 1988, Revised: February 22, 1989;

—Fairchild SB 227–24–008, Issued: March 18, 1988, Revised: February 22, 1989;

—Fairchild SB 226–24–023, Issued: October 25, 1985, Revised: January 23, 1989;

—Fairchild SB 227–24–005, Issued: October 25, 1985, Revised: January 23, 1989;

—Fairchild SB 226–24–026, Issued: May 27, 1987;

—Fairchild SB 24–018, Issued: October 22, 1980, Revised: January 7, 1981;

—Fairchild SB 226–24–031, dated July 27, 1989;

—Fairchild SB 227–24–012, Issued: May 4, 1989, Revised: July 27, 1989.

Need for the Correction

Reference in paragraph (a) of AD 97–11–13 includes an incorrect date for Fairchild Service Bulletin (SB) 227–24–008. The date of this SB in paragraph (a) of this AD is Issued: October 25, 1985, Revised: January 23, 1989. The correct date should be Issued: March 18, 1988, Revised: February 22, 1989. All other reference in the AD is correct. As written, owners/operators of certain Fairchild SA227 series airplanes may not realize what service bulletin they would need to accomplish the actions of AD 97–11–13, and could not obtain Fairchild SB 227–24–008 based on the date that is currently printed in paragraph (a) of AD 97–11–13.

Correction of Publication

Accordingly, the publication of May 29, 1997 (62 FR 28999), of Amendment 39–10042; AD 97–11–13, which was the subject of FR Doc. 97–14076, is corrected as follows:

§ 39.13 [Corrected]

On page 29000, in the third column, section 39.13, the eighth and ninth lines in paragraph (a) of AD 97–11–13, correct ''Issued: October 25, 1985, Revised: January 23, 1989,'' to ''Issued: March 18, 1988, Revised: February 22, 1989''.

Action is taken herein to correct this reference in AD 97–11–13 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains July 11, 1997.

Issued in Kansas City, Missouri, on July 16, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19262 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–17]

Modification of Class D Airspace and Establishment and Modification of Class E Airspace; Grand Forks, ND, Grand Forks International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace, establishes Class E surface area airspace, and modifies existing Class E airspace at Grand Forks, ND. Operation of the air traffic control tower for less than 24 hours per day, and a re-evaluation of the airspace requirements for the exiting instrument approach procedures necessitate these changes to the existing controlled airspace for Grand Forks International Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, April 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D airspace, establish Class E surface area airspace, and to modify existing Class E airspace at Grand Forks, ND (62 FR 20135). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations for airspace areas within which all aircraft operators are subject to operating rules and equipment requirements of Part 91 of the Federal Aviation Regulations (14 CFR 91.129) are published in paragraph 5000, Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002, Class E airspace designations for airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D airspace, establishes Class E surface area airspace, and modifies existing Class E airspace at Grand Forks, ND. This action provides adequate Class D airspace and Class E airspace for operators executing instrument flight procedures at Grand Forks International Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace areas within all aircraft operators are subject to operating rules and equipment requirements of Part 91 of the Federal Aviation Regulations (14 CFR 91.129).

* * * * *

AGL ND D Grand Forks, ND [Revised]

Grand Forks International Airport, ND
(Lat. 47°56′58″N, long. 97°10′34″W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.2-mile radius of Grand Forks International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL ND E2 Grand Forks, ND [New]

Grand Forks International Airport, ND
(Lat. 47°56′58″N, long. 97°10′34″W)
Grand Forks VOR/DME
(Lat. 47°57′17″N, long. 97°11′07″W)

Within a 4.2-mile radius of Grand Forks International Airport, and within 2.5 miles each side of the Grand Forks VOR/DME 007° radial extending from the 4.2-mile radius of the airport to 7 miles north of the VOR/DME and within 2.5 miles each side of the Grand Forks VOR/DME 173° radial extending from the 4.2-mile radius of the airport to 7 miles south of the VOR/DME. The Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL ND E4 Grand Forks, ND [Revised]

Grand Forks International Airport, ND
(Lat. 47°56′58″N, long. 97°10′34″W)
Grand Forks VOR/DME
(Lat. 47°57′17″N, long. 97°11′07″W)

That airspace extending upward from the surface within 2.5 miles each side of the Grand Forks VOR/DME 007° radial extending from the 4.2-mile radius of the airport to 7 miles north of the VOR/DME and within 2.5 miles each side of the Grand Forks VOR/DME 173° radial extending from the 4.2-mile radius of the airport to 7 miles south of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL ND E5 Grand Forks, ND [Revised]

Grand Forks International Airport, ND
(Lat. 47°56′58″N, long. 97°10′34″W)
Grand Forks Air Force Base, ND
(Lat. 47°57′40″N, long. 97°24′04″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Grand Forks International Airport and within a 7-mile radius of Grand Forks AFB, and within 3 miles each side of the ILS Localizer north course, from the Grand Forks International Airport, extending from the 7-mile radius to 10 miles north of the airport, and that airspace extending upward from 1,200 feet above the surface within a 34-mile radius of Grand Forks AFB, within the state of North Dakota.

* * * * *

Issued in Des Plaines, Illinois on July 1, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19255 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–7]

Amendment to Class D Airspace; Miami Opa Locka Airport, FL, and Hollywood North Perry Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class D airspace areas at Miami Opa Locka Airport, FL, and Hollywood North Perry Airport, FL. As a result of a recent airspace review of the Class D airspace areas at both locations, it was determined that additional controlled airspace extending upward from the surface is needed to accommodate Instrument Flight Rules (IFR) operations at the Opa Locka and North Perry Airports.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Wade Carpenter, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 0305–5581.

SUPPLEMENTARY INFORMATION:

History

On April 14, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D airspace at Miami Opa Locka Airport, FL and Hollywood North Perry Airport, FL, (62 FR 18065). This action would provide adequate Class D airspace for IFR operations at the Opa Locka and North Perry Airports.

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace at Miami Opa Locka Airport, FL, and Hollywood North Perry Airport, FL, to provided the additional controlled airspace required to accommodate IFR operations at the Opa Locka and North Perry Airports.

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

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Miami, Opa Locka Airport, FL [Revised]

Miami, Opa Locka Airport, FL
(Lat. 25°54′26″ N, long. 80°16′48″ W)
North Perry Airport
(Lat. 26°00′05″ N, long. 80°14′26″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Opa Locka Airport excluding that airspace south of 25°52′03″ N, and that portion north of a line connecting the 2 points of intersection with a 4-mile radius centered on the North Perry Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL D Hollywood, FL [Revised]

Hollywood, North Perry Airport, FL
(Lat. 26°00′05″ N, long. 80°14′26″ W)
Opa Locka Airport
(Lat. 25°54′26″ N, long. 80°16′48″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the North Perry Airport; excluding the portion north of the north boundary of the Miami, FL, Class D airspace area and that portion south of a line connecting the 2 points of intersection with a 4.3-mile circle centered on the Opa Locka Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 26, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–19257 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–13]

Modification of Class E Airspace; Mitchell, SD, Mitchell Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Mitchell, SD. The Class E airspace effective times and dates are being changed to 24 hours per day continuous. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday April 24, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Mitchell, SD (62 FR 19953). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Mitchell, SD, to accommodate the change of airspace effective times and dates to 24 hours per day continuous. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approaches. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL SD E2 Mitchell, SD [Revised]

Mitchell Municipal Airport, SD
(Lat. 43°46′29″ N, long. 98°02′19″ W)
Mitchell VOR/DME
(Lat. 43°46′37″ N, long. 98°02′15″ W)

Within a 4.2-mile radius of Mitchell Municipal Airport and within 2.4 miles each side of the Mitchell VOR/DME 149° radial, extending from the 4.2-mile radius zone to 7 miles southeast of the VOR/DME; and within 2.4 miles each side of the Mitchell VOR/DME 301° radial, extending from the 4.2-mile radius zone to 7 miles northwest of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on June 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19256 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–16]

Establishment and Modification of Class E Airspace; Ironwood, MI, Ironwood Gogebic County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This section establishes Class E Surface area airspace, and modifies Class E airspace at and above 700 feet above ground level (AGL) at Ironwood, MI. The introduction of the Automated Weather Observing System (AWOS–3) at the airport and a reevaluation of the airspace requirements for the existing instrument approach procedures necessitated these changes to the existing controlled airspace for the airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, April 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E surface area airspace and modify the Class E airspace at and above 700 feet AGL at Ironwood, MI (62 FR 20136). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporate by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E surface area airspace and modifies the Class E airspace at and above 700 feet AGL at Ironwood, MI, to provide adequate Class E airspace for operators executing instrument flight procedures at Ironwood Gogebic County Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Ironwood, MI [New]

Ironwood Gogebic County Airport, MI
(Lat. 46°31′39″ N, long. 90°07′53″ W)
Ironwood ILS
(Lat. 46°31′39″ N, long. 90°09′12″ W)
Ironwood VORTAC
(Lat. 46°31′56″ N, long. 90°07′33″ W)

Within a 4.1-mile radius of Ironwood Gogebic County Airport, and within 3.5 miles each side of the ILS Localizer east course, extending from the 4.1-mile radius to 10.2 miles east of the airport, and that airspace within 2.4 miles each side of the Ironwood VORTAC 260° radial extending from the 4.1-mile radius to 7 miles west of the VORTAC.

* * * * *

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

* * * * *

AGL MI E5 Ironwood, MI [Revised]

Ironwwod Gogebic County Airport, MI
(Lat. 46°31′39″ N, long. 90°07′53″ W)
Ironwood ILS
(Lat. 46°31′39″ N, long. 90°09′12″ W)
Ironwood VORTAC
(Lat. 46°31′56″ N, long. 90°07′33″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile

radius of the Ironwood Gogebic County Airport and within a 3.5 miles each side of the ILS Localizer Course, extending from the 6.6-mile radius to 10.2 miles east of the airport and within 3.2 miles each side of the Ironwood VORTAC 104° radial extending from the 6.6-mile radius to 11.7 miles southeast of the VORTAC, and within 2.4 miles each side of the Ironwood VORTAC 260° radial extending from the 6.6-mile radius to 7 miles west of the VORTAC and that airspace extending upward from 1,200 feet above the surface within a 21-mile radius of the Ironwood VORTAC excluding that airspace within the State of Wisconsin.

* * * * *

Issued in Des Plaines, Illinois on July 1, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19254 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–14]

Establishment of Class E Airspace; Bismarck, ND, Bismarck Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bismarck, ND. This airport is served by Federal Aviation Regulations Part 121 (14 CFR Part 121) and Part 135 (14 CFR Part 135) air carrier operations during periods when the air traffic control tower is closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures after the air traffic control tower is closed. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 24, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Bismarck, ND (62 FR 19954). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Bismarck, ND, to accommodate aircraft operators during periods when the air traffic control tower is closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approaches. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Bismarck, ND [New]

Bismarck Municipal Airport, ND
(Lat. 46°46′26″ N, long. 100°44′52″ W)

Within a 4.8-mile radius of the Bismark Municipal Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on June 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19253 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–34]

Establishment of Class E Airspace; St. Cloud, MN; St. Cloud Regional Airport; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the wording regarding times of operation in the legal description of the St. Cloud, MN, Class E airspace area which was established by a final rule that was published in the **Federal Register** on April 9, 1997, Airspace Docket No. 96–AGL–34.

DATES: Effective July 23, 1997.

FOR FURTHER INFORMATION CONTACT:

Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone: (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–9133, Airspace Docket No. 96–AGL–34, published on April 9, 1997 (62 FR 17055) established Class E surface area airspace area at St. Cloud, MN. The legal description of the airspace included wording indicating less than continuous times of operation for the airspace for St. Cloud Regional Airport. The intent was to establish continuous Class E surface area airspace. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace area at St. Cloud, MN, (62 FR 17055), (FR Doc. 97–9133; page 17056), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AGL MN E2 St. Cloud, MN [Corrected]

On page 17056, in the Class E airspace designation for St. Cloud, MN, incorporated by reference in Sec. 71.1, delete the following sentences: ''This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

* * * * *

Maureen Woods,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 97–19252 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–21]

Revision of Class E Airspace; Silver City, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Silver City, NM. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 26 at Silver City-Grant County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the GPS SIAP to RWY 26 at Silver City, NM.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On February 20, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Silver City, NM, was published in the **Federal Register** (62 FR 7733). A GPS SIAP to RWY 26 developed for Silver City-Grant County Airport, Silver City, NM, requires the revision of the Class E airspace at this airport. The proposal would revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace located at Silver City, NM, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS SIAP to RWY 26.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 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 1996, is amended as follows:

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

* * * * *

ASW NM E5 Silver City, NM [Revised]

Silver City-Grant County Airport, NM
(Lat. 32°38′11″N., long. 108°09′23″W.)
Silver City Localizer
(Lat. 32°37′57″N., long. 108°09′59″W.)
Cozey LOM
(Lat. 32°37′55″N., long. 108°03′48″W.)
Silver City VORTAC
(Lat. 32°38′16″N., long. 108°09′40″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Silver City-Grant County Airport and within 2.2 miles south and 7 miles north of the Silver City Localizer east course extending from the 6.8-mile radius to 14.4 miles east of the airport and within 1.9 miles each side of the 107° bearing from the Cozey LOM extending from the 6.8-mile radius to 8.2 miles southeast of the airport and within 8 miles west and 4 miles east of the 141° radial of the Silver City VORTAC extendng from the 6.8-mile radius to 19.7 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on July 2, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19251 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–15]

Modification of Class E Airspace; Medford, WI, Medford, Taylor County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Medford, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Medford, Taylor County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Effective 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 24, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Medford, WI (62 FR 19955). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Medford, WI, to accommodate aircraft executing the GPS Runway 27 SIAP at Medford, Taylor County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Medford, WI [Revised]

Medford Taylor County Airport, WI
(Lat. 45°06′04″ N, long. 90°18′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Medford, Taylor County Airport, and within 2.7 miles each side of the 162° bearing from the airport extending from the 6.6-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, llinois on June 24, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19258 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28957; Amdt. No. 1806]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—1. FAA Rules Docket, FAA Headquarters Building,

800 Independence Avenue, SW., Washington, DC 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on June 27, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
05/13/97	MS	Greenville	Mid Delta Regional	FDC 7/2730	VOR or GPS Rwy 18R, Amdt 5...
05/13/97	MS	Greenville	Mid Delta Regional	FDC 7/2731	NDB or GPS Rwy 36L, Amdt 5...
06/10/97	IN	Anderson	Anderson Municipal-Darlington Field	FDC 7/3519	NDB or GPS Rwy 30, Amdt 5...
06/10/97	IN	Anderson	Anderson Municipal-Darlington Field	FDC 7/3521	VOR or GPS–A, Amdt 8...
06/11/97	IL	Alton/St Louis	St Louis Regional	FDC 7/3545	LOC BC Rwy 11, Amdt 7...
06/11/97	IL	Alton/St Louis	St Louis Regional	FDC 7/3546	VOR or GPS–A, Amdt 8...

FDC Date	State	City	Airport	FDC No.	SIAP
06/11/97	IL	Alton/St Louis	St Louis Regional	FDC 7/3547	NDB or GPS Rwy 17, Amdt 10A...
06/11/97	IL	Alton/St Louis	St Louis Regional	FDC 7/3548	NDB or GPS Rwy 29, Amdt 10...
06/11/97	IL	Alton/St Louis	St Louis Regional	FDC 7/3567	ILS Rwy 29, Amdt 10...
06/11/97	IL	Chicago/Aurora	Aurora Muni	FDC 7/3541	ILS Rwy 9, Amdt 1...
06/11/97	IL	Chicago/Aurora	Aurora Muni	FDC 7/3543	VOR or GPS A, Amdt 1...
06/11/97	MI	Alpena	Alpena County Regional	FDC 7/3552	NDB or GPS Rwy 1, Amdt 6...
06/11/97	MI	Alpena	Alpena County Regional	FDC 7/3553	ILS Rwy 1, Amdt 8...
06/11/97	MI	Alpena	Alpena County Regional	FDC 7/3554	VOR Rwy 1, Amdt 14...
06/11/97	MI	Alpena	Alpena County Regional	FDC 7/3555	VOR or GPS Rwy 19, Amdt 14...
06/11/97	MI	West Branch	West Branch Community	FDC 7/3529	NDB or GPS Rwy 27, Amdt 6A...
06/11/97	NC	Greenville	Pitt-Greenville	FDC 7/3532	ILS Rwy 19, Amdt 2B...
06/11/97	OH	Columbus	Bolton Field	FDC 7/3539	ILS Rwy 4, Amdt 4...
06/11/97	OH	Columbus	Bolton Field	FDC 7/3540	NDB or GPS Rwy 4, Amdt 6...
06/16/97	IL	Springfield	Capital	FDC 7/3646	ILS Rwy 31, Orig...
06/16/97	PA	Ebensburg	Ebensburg	FDC 7/3636	VOR or GPS–A Amdt 6...
06/16/97	PR	Aguadilla	Rafael Hernandez	FDC 7/3634	VOR Rwy 8 Amdt 5...
06/17/97	MN	St Paul	St Paul Downtown Holman Field	FDC 7/3672	ILS Rwy 32, Amdt 3B...
06/17/97	WI	Eagle River	Eagle River Union	FDC 7/3665	VOR/DME or GPS Rwy 4 Amdt 1...
06/17/97	WI	Eagle River	Eagle River Union	FDC 7/3666	NDB or GPS Rwy 22 Amdt 5...
06/18/97	IA	Muscatine	Muscatine Muni	FDC 7/3693	GPS Rwy 23, Amdt 1...
06/18/97	IA	Muscatine	Muscatine Muni	FDC 7/3694	NDB or GPS Rwy 5, Amdt 12A...
06/18/97	IA	Muscatine	Muscatine Muni	FDC 7/3695	VOR Rwy 23, Amdt 6A...
06/18/97	OH	Columbus	Ohio State University	FDC 7/3691	GPS Rwy 27L, Orig...
06/18/97	OH	Columbus	Ohio State University	FDC 7/3692	GPS Rwy 9R, Orig...
06/19/97	GA	Gainesville	Lee Gilmer Memorial	FDC 7/3719	NDB or GPS Rwy 4, Amdt 4A...
06/19/97	GA	Gainesville	Lee Gilmer Memorial	FDC 7/3721	LOC Rwy 4, Amdt 5B...
06/19/97	IA	Muscatine	Muscatine Muni	FDC 7/3712	RNAV Rwy 23 Orig–A...
06/19/97	ID	Nampa	Nampa Muni	FDC 7/3708	NDB–A Orig...
06/19/97	IL	Lawrenceville	Lawrenceville-Vincennes Intl	FDC 7/3713	VOR or GPS Rwy 27, Amdt 6...
06/23/97	GA	Atlanta	The William B. Hartsfield Atlanta Intl	FDC 7/3791	ILS Rwy 26R Amdt 2...
06/23/97	TN	Memphis	Memphis Intl	FDC 7/3822	ILS Rwy 18L, Orig...

[FR Doc. 97–19360 Filed 7–22–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28958; Amdt. No. 1807]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—1. FAA Rules Docker, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

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

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on June 27, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective July 17, 1997*

Caldwell, ID, Caldwell Industrial, GPS RWY 12, Orig
Caldwell, ID, Caldwell Industrial, GPS RWY 30, Orig
Flemingsburg, KY, Fleming-Mason, NDB RWY 25, Orig
Lumberton, NC, Lumberton Muni, VOR RWY 5, Amdt 8
Lumberton, NC, Lumberton Muni, VOR or GPS RWY 13, Amdt 9
Lumberton, NC, Lumberton Muni, NDB or GPS RWY 5, Amdt 1
Lumberton, NC, Lumberton Muni, NDB RWY 13, Amdt 8
Lumberton, NC, Lumberton Muni, ILS RWY 5, Orig
Houston, TX, Ellington Field, ILS RWY 17R, Amdt 4
Houston, TX, Ellington Field, ILS RWY 22, Amdt 2
Houston, TX, Ellington Field, ILS RWY 35L, Amdt 4

** * * Effective August 14, 1997*

San Francisco, CA, San Francisco Intl, BAY ILS/DME RWY 28L, Amdt 1, CANCELLED
Chicago/Prospect Hgts/Wheeling, IL, Palwaukee Muni, VOR RWY 16, Orig
Chicago/Prospect Hgts/Wheeling, IL, Palwaukee Muni, ILS RWY 16, Orig
Chicago/Wheeling, IL, Palwaukee Muni, VOR OR GPS RWY 16, Amdt 19, CANCELLED
Chicago/Wheeling, IL, Palwaukee Muni, ILS RWY 16, Amdt 6, CANCELLED
Minneapolis, KS, Minneapolis City County, VOR/DME RWY 34, Orig. CANCELLED
Ft Mead (Odenton), MD, Col William F. (Shorty) Tipton, NDB OR GPS RWY 10, Orig CANCELLED
Jefferson City, MO, Jefferson City Memorial, NDB RWY 30, Amdt 8A, CANCELLED
Newark, NJ, Newark Intl, ILS RWY 22R, Amdt 1

** * * Effective September 11, 1997*

Davis/Woodland/Winters, CA, Yolo County-Davis/Woodland/Winters, GPS RWY 34, Orig
Davis/Woodland/Winters, CA, Yolo County-Davis/Woodland/Winters, VOR RWY 16, Orig
Davis/Woodland/Winters, CA, Yolo County-Davis/Woodland/Winters, GPS RWY 34, Orig
Livermore, CA, Livermore Muni, GPS RWY 25R, Orig
Ramona, CA, Ramona, VOR/DME OR GPS–A, Amdt 1
Truckee, Truckee-Tahoe, CA, GPS RWY 19, Orig
Beverly, MA, Beverly Muni, GPS RWY 16, Orig
South St. Paul, MN, South St Paul Muni-Richard E Fleming Fld, GPS RWY 34, Orig
Montgomery, NY, Orange County, VOR OR GPS RWY 8, Amdt 8
Montgomery, NY, Orange County, NDB RWY 3, Amdt 3
Montgomery, NY, Orange County, GPS RWY 3, Orig
Gallipolis, OH, Gallia-Meigs Regional, GPS RWY 23, Orig
Bay City, TX, Bay City Muni, GPS RWY 31, Orig
Petersburg, WV, Grant County, GPS RWY 31, Orig

[FR Doc. 97–19359 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Initiation and Conduct of Investigations

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 200 to end, revised as of April 1, 1997, make the following correction.

On page 21, the text of § 201.7 is incorrect. The text should appear as follows:

§ 201.7 Investigative authority and initiation of investigations.

(a) *Investigative authority.* In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized

investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;

(b) *Initiation of investigations.* Investigations may be initiated by the Commission on the Commission's own motion, upon request of the President or the Special Representative for Trade Negotiations, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon resolution of either branch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive Order, or in this chapter.

[44 FR 76476, Dec. 26, 1979]

[FR Doc. 97–55555 Filed 7–22–97; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 50

[Docket No. 95N–0340]

RIN 0910–AA54

Revocation of Certain Regulations; General

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking certain regulations that are obsolete or no longer necessary to achieve public health goals. These regulations have been identified for revocation as the result of a page-by-page review of the agency's regulations. This regulatory review is in response to the Administration's ''Reinventing Government'' initiative which seeks to streamline government to ease the burden on regulated industry and consumers.

EFFECTIVE DATE: August 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulations mentioned in this document: Philip L. Chao, Policy Development and Coordination Staff (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

Regarding general information on FDA's ''reinventing initiative:'' Lisa M. Helmanis, Regulations Policy Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton announced plans for reforming the Federal regulatory system as part of his ''Reinventing Government'' initiative. In his March 4 directive, the President ordered all Federal agencies to conduct a page-by-page review of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In the **Federal Register** of January 25, 1996 (61 FR 2192), FDA issued a proposal to revoke certain obsolete and unnecessary regulations. The proposal represented FDA's continuing effort to implement the President's plan and followed other proposals in previous issues of the **Federal Register** revoking or revising other FDA regulations.

The following is a section-by-section analysis of the regulations that FDA proposed to revoke and any comments or issues associated with those regulations. These regulations are listed numerically as they appear in title 21 of the Code of Federal Regulations (CFR).

I. Section-by-Section Analysis

(1) Section 1.31 *Package size saving* (21 CFR 1.31) addressing economy size packaging. FDA proposed to revoke this provision because it is obsolete, and FDA is not aware of its recent use.

FDA received one comment on this provision, and the comment expressed no objection to revoking this provision. Consequently, § 1.31 is revoked.

(2) Section 1.35 *''Cents-off,'' or other savings representations* (21 CFR 1.35) prohibiting the placement of any printed matter stating or representing by implication that a product is offered for sale at a price that is lower than the ordinary and customary retail price. FDA proposed to revoke this provision because it is obsolete, and FDA is not aware of its recent use.

FDA received one comment on this provision, and the comment expressed no objection to revoking this provision. Consequently, the agency has revoked § 1.35.

(3) Section 2.5 *Imminent hazard to the public health* (21 CFR 2.5) describes the criteria that the Commissioner of Food and Drugs would use in determining whether an imminent hazard exists. FDA issued this regulation in the **Federal Register** of July 1, 1971 (36 FR 12516). FDA proposed to revoke § 2.5 in the **Federal Register** of August 21, 1979 (44 FR 48983), in conjunction with broader rulemaking proceedings that would have established by regulation, among other things, certain criteria for the Secretary of Health and Human Services' (the Secretary) determination of an imminent hazard. FDA later withdrew the 1979 proposed rule on January 20, 1994 (59 FR 3042). However, the principle upon which FDA based its proposed withdrawal of § 2.5 in 1979 is still valid, namely, that it is ''potentially confusing to have criteria for FDA's recommendations to the Secretary separate from the criteria for the Secretary's decision'' (44 FR 48983 at 48985). The criteria used by the Secretary in finding an imminent hazard were established in 1977 in the Secretary's decision declaring phenformin hydrochloride to be an imminent hazard. This decision was upheld in *Forsham* v. *Califano*, 442 F.Supp. 203 (D. D.C. 1977). Consequently, FDA again proposed to revoke § 2.5 because it is potentially confusing and no longer necessary (61 FR 2192).

The agency did not receive any comments on the proposal to revoke § 2.5. However, upon further reflection, FDA has decided to retain § 2.5 because the terms ''imminent hazard'' appear in several provisions of the Federal Food, Drug, and Cosmetic Act (the act) and its implementing regulations (see, e.g., section 402(f)(1)(C) of the act (21 U.S.C. 342(f)(1)(C)) (concerning adulteration of dietary supplements); section 512(e)(1) of the act (21 U.S.C. 360b(e)(1)) concerning withdrawals of approval of animal drugs); section 802(f) of the act (21 U.S.C. 382(f)) (concerning prohibition of exports); 21 CFR 314.153(a)(1) (suspension of approval of abbreviated new drug applications); 21 CFR 804.28(b)(3) (medical device reporting for distributors)). Therefore, to continue providing guidance in interpreting these and other provisions in the act and FDA regulations, the agency is retaining § 2.5.

(4) 21 CFR part 10, subpart C, Electronic Media Coverage of Public Administrative Proceedings; Guideline on Policy and Procedures, described FDA's policy on the presence and operation of electronic recording equipment at public proceedings. The preamble to the proposed rule explained that the subpart ''is a statement of policy and need not be codified. The information is available to those presiding over such proceedings through appropriate agency publications (e.g., Policy and Guidance Handbook for FDA Advisory Committee Members' and from the staff in FDA's Office of Public Affairs'' (61 FR 2192 and 2193).

FDA received one comment arguing against deleting the subpart. The comment explained that ''policy can

change more readily than regulations or guidelines'' so that ''the freedom to electronically cover public meetings is too important to be changed only as a result of internal Agency deliberation * * * if this policy is to be modified, it should be done so only in accordance with standard rule-making procedures, with a public comment period on the specific changes * * *.''

FDA has decided to retain subpart C even though the agency continues to maintain that guidelines and policy statements neither need to be codified in the CFR nor issued through notice and comment rulemaking. FDA is retaining subpart C in its regulations because, on rare occasions, the agency has cited provisions in subpart C to address certain issues, such as whether cameras are allowed at a particular meeting. The fact that subpart C is a regulation, and therefore more binding than a guideline, has also made it easier for interested parties to read and to adhere to FDA's decisions on electronic media at a public meeting.

Furthermore, FDA fully intends to seek public participation in the initiation, development, and issuance of guidance documents and is taking steps to improve its guidance document procedures (see 62 FR 8961, February 27, 1997 (establishing ''good guidance practices'')). Improved guidance document procedures should address the comment's principal concern that the public should have the opportunity to comment on changes to guidance documents.

(5) Section 50.21 *Effective date* (21 CFR 50.21) stated that the informed consent requirements in part 50 ''apply to all human subjects entering a clinical investigation that commences on or after July 27, 1981.'' FDA proposed to revoke this provision because it is no longer necessary. The preamble to the proposed rule explained that FDA is unaware of any continuing clinical investigations that were begun before July 27, 1981, to warrant retaining this provision.

FDA received no comments on this provision and has revoked § 50.21.

(6) 21 CFR part 50, subpart C, Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects, described restrictions on clinical investigations involving prisoners, including special requirements for institutional review boards reviewing clinical investigations involving prisoners. In the **Federal Register** of July 7, 1981 (46 FR 35085), FDA stayed the effective date of the subpart C regulations and never made them effective. Consequently, the January 25, 1996, proposed rule would revoke the subpart C regulations.

FDA received no comments on this subpart and has revoked subpart C of part 50 as well as the definition of ''prisoner'' at § 50.3(j) and renumbered the remaining definitions accordingly.

II. Analysis of Impacts

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

Unless the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule eliminates certain regulatory provisions that the agency has not used or made effective or that have become obsolete. Consequently, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1 and 50 are amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371); sec. 215 of the Public Health Service Act (42 U.S.C. 216).

§ 1.31 [Removed]

2. Section 1.31 *Package size savings* is removed from subpart B.

§ 1.35 [Removed]

3. Section 1.35 *''Cents-off,'' or other savings representations* is removed from subpart B.

PART 50—PROTECTION OF HUMAN SUBJECTS

4. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

§ 50.3 [Amended]

5. Section 50.3 *Definitions* is amended by removing paragraph (j), and redesignating paragraphs (k), (l), (m) and (n) as paragraphs (j), (k), (l) and (m), respectively.

§ 50.21 [Removed]

6. Section 50.21 *Effective date* is removed from subpart B.

Subpart C [Removed]

7. Subpart C consisting of §§ 50.40 through 50.48 is removed.

Dated: July 14, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–19248 Filed 7–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0051]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of oxidized bis (hydrogenated tallow alkyl) amines as a process stabilizer for polypropylene homo- and copolymers and high-density polyethylene homo- and copolymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective July 23, 1997; written objections and requests for a hearing by August 22, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 23, 1996 (61 FR 7005), FDA announced that a food additive petition (FAP 6B4491) had been filed by Ciba-Geigy Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005 (zip code was incorrectly identified as 10591–4311). The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to expand the safe use of oxidized bis (hydrogenated tallow alkyl) amines as a process stabilizer for polypropylene homo- and copolymers and high-density polyethylene homo- and copolymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive as a process stabilizer for polypropylene homo- and copolymers and high-density polyethylene homo- and copolymers is safe and that the additive will have the intended technical effect. Therefore, the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. No comments were received during the 30-day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before August 22, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by revising ''Limitations'' for the entry ''Oxidized bis (hydrogenated tallow alkyl) amines'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Oxidized bis (hydrogenated tallow alkyl) amines	For use only: 1. At levels not to exceed 0.1 percent by weight of polypropylene polymers complying with § 177.1520(c) of this chapter, item 1.1, 1.2, 1.3, 3.1a (density not less than 0.85 gram per cubic centimeter and less than 0.91 gram per cubic centimeter), 3.2b, 3.4, and 3.5. The finished polymers may be used in contact with food types I, II, IV–B, VII–B and VIII described in Table 1 of § 176.170(c) of this chapter, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter and with food types III, IV–A, V, VI, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter, under conditions of use D through H described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.075 percent by weight of high-density polyethylene polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.6 (density not less than 0.94 gram per cubic centimeter), and 5. The finished polymers may be used in contact with food types I, II, IV–B, VII–B and VIII described in Table 1 of § 176.170(c) of this chapter, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter, and with food types III, IV–A, V, VI, VII–A and IX described in Table 1 of § 176.170(c) of this chapter, under conditions of use D through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: July 3, 1997.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–19250 Filed 7–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Hoechst Roussel Vet.

EFFECTIVE DATE: July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, Rt. 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, has informed FDA of a change of sponsor address to Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Hoechst Roussel Vet'' and in the table in paragraph (c)(2) in the entry for ''012799'' by revising the sponsor address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	* * *
Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059.	012799
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * * *	* * *
012799	Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059.
* * *	* * * *

Dated: July 7, 1997.

Robert C. Livingston,

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

[FR Doc. 97–19243 Filed 7–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA provides for use of tylosin to make a medicated drinking water for chickens, turkeys, and swine for control and/or treatment of infections sensitive to tylosin.

EFFECTIVE DATE: July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 13–076 that provides for use of packages containing the equivalent of 100 grams (g) of tylosin to make 50 gallons of chicken and turkey drinking water, and one-half package or 50 g of tylosin to make 200 gallons of swine drinking water, to treat tylosin sensitive infections. The tylosin base soluble powder approved under NADA 13–029 for swine and the tylosin tartrate soluble powder approved under NADA 13–076 for chickens and turkeys are considered to be DESI-equivalent based on the findings of the National Academy of Sciences/National Research Council (NAS/NRC) review of the products and FDA's conclusions based on that review, and should have been DESI-finalized as one application. The supplement provides for incorporating NADA 13–029 into NADA 13–076 and in a separate action, withdrawing approval of NADA 13–029. The supplemental NADA is approved as of May 27, 1997, and the regulations are amended in 21 CFR 520.2640 to reflect the approval.

Approval of this supplement is an administrative action that did not require submission of added safety or efficacy data. Accordingly, a freedom of information summary is not required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.2640 [Amended]

2. Section 520.2640 *Tylosin* is amended in paragraphs (e)(1)(iii) and (e)(2)(iii) by removing the phrase ''as tylosin tartrate'', and in paragraph (e)(3)(iii) by removing the phrase ''present as tylosin base''.

Dated: July 7, 1997.

Robert C. Livingston,

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

[FR Doc. 97–19245 Filed 7–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13–97–016]

RIN 2115–AE46

Special Local Regulations; Seattle Seafair Unlimited Hydroplane Race, Lake Washington, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule temporarily amends the effective date of the special local regulations for the Seattle Seafair Unlimited Hydroplane Race, to be held from August 7, 1997 to August 10, 1997. This change is needed because this year's race will occur a week later than it is normally held. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators of the Hydroplane Race.

DATES: This final rule is effective from August 7 until August 11, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134–1192. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Joel Roberts, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134–1192, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective less than 30 days from the date of publication in the **Federal Register**. Publishing a NPRM would be contrary to the public interest since immediate action is necessary to ensure the safety

of vessels and spectators on the navigable waters during this event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

This final rule temporarily amends the effective date of the special local regulations for the Seattle Seafair Unlimited Hydroplane Race contained in 33 CFR 100.1301. This year's races will be held between August 7, 1997 and August 10, 1997. This change is needed because this year's race will occur a week later than it is normally held. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators of the Hydroplane Race.

The Seattle Seafair Unlimited Hydroplane Race occurs annually on the waters of Lake Washington. Participant craft are high speed, high performance vessels which can be restricted in their ability to maneuver within a short distance. The competition consistently draws large numbers of spectator craft. The implementation of the special local regulations on the dates specified in temporary section 33 CFR 100.T13013 enhance the safety of the participants and spectators.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has 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 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal, due to the event's short duration, that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), 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 small 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). Because the impacts of this rule are expected to be minimal, due to the event's short duration, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that under Section 2.B.2.e of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, 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.

2. From August 7 until August 11, 1997, in § 100.1301, paragraph (a) is suspended and a new paragraph (j) is added to read as follows:

§ 100.1301 [Amended]

* * * * *

(j) This regulation is in effect from August 7–11, 1997.

Dated: July 14, 1997.

E.I. Kiley,

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

[FR Doc. 97–19408 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–015]

Safety Zone Regulation; Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 33 CFR 165.1307 to correct an error in the description of the safety zone. On the 4th of July each year a fireworks display is launched from a barge positioned upon the waters of Elliott Bay, Seattle, WA. A safety zone is established around the barge to promote the safety of spectators and participants during this event.

EFFECTIVE DATE: July 23, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection and copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Joel Roberts, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard is amending 33 CFR 165.1307 to correct an error in the description of the safety zone. The safety zone was intended to resemble a square centered around the barge from which the fireworks will be launched. The position describing the western corner of the safety zone contained incorrect digits in the latitude and longitude.

This error displaced the western corner of the safety zone one mile from its intended position. That position is corrected along with an additional minor refinement to the description of the eastern corner point of the safety zone to better establish the originally intended square.

Regulatory Evaluation

This proposal 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 CFR 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. This expectation is based on the fact that the rule simply corrects minor errors in the description of an existing permanent safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small 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). Because the impacts of this proposal are expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule 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 rule and has concluded that under Section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Section 165.1307 is amended by revising paragraph (a) to read as follows:

§ 165.1307 Elliott Bay, Seattle, WA.

(a) *Location.* The following area is a safety zone: All portions of Elliott Bay bounded by the following coordinates: Latitude 47°37′22″ N, Longitude 122°22′06″ W; thence to Latitude 47°37′06″ N, Longitude 122°21′45″ W; thence to Latitude 47°36′54″ N, Longitude 122°22′05″ W; thence to Latitude 47°37′08″ N, Longitude 122°22′27″ W; thence returning to the origin. This safety zone resembles a square centered around the barge from which the fireworks will be launched and begins 100 yards from the shoreline of Myrtle Edwards Park. Floating markers will be placed by the sponsor of the fireworks display to delineate the boundaries of the safety zone [Datum NAD 1983].

* * * * *

Dated: June 26, 1997.

Myles S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 97–19407 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–97–058]

RIN 2115–AA97

Safety Zone: Delaware Bay, Delaware River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware Bay and Delaware River between the Delaware Breakwater and Westville, New Jersey. This temporary safety zone is needed to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the loading and transit of the T/V LINGEGAS while it is loaded with more than 2% of its cargo carrying capacity of Liquefied Hazardous Gas.

EFFECTIVE DATE: This rule is effective from 11:59 p.m. July 12, 1997, and terminates at 11:59 p.m. July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Lt. S. A. Budka, Project Officer c/o U.S. Coast Guard Captain of the Port, 1 Washington Avenue, Philadelphia, PA 19147–4395, Phone: (215) 271–4889.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was informed by the owner/operator of the T/V LINGEGAS on July 9, 1997 of the intended transit of the T/V LINGEGAS along the Delaware River. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to protect the environment and vessel traffic against potential hazards associated with the transit of the T/V LINGEGAS while it is loaded with Liquefied Hazardous Gas.

Discussion of the Regulation

This temporary rule establishes a safety zone in a specified area around the T/V LINGEGAS while underway in the loaded condition and during cargo operations. The safety zone will be in effect during the T/V LINGEGAS' transit of the Delaware Bay and Delaware River and during cargo operations at the Coastal Eagle Point Refinery on the Delaware River, at Westville, New Jersey. This temporary rule is intended to minimize the potential hazards associated with the transportation of Liquefied Hazardous Gas by a large tankship in heavily trafficked areas of the Delaware Bay and Delaware River as well as in the Ports of Philadelphia. Entry into this zone is prohibited unless authorized by the Captain of the Port, Philadelphia, PA. The Captain of the Port may impose certain restrictions on vessels allowed to enter the safety zone.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under

section 6(a)(3) of that order. It has 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 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism Assessment

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

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that under section 2.B.2.e(34) of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.T05–058 is added to read as follows:

§ 165.T05–058 Safety Zone: Delaware Bay and Delaware River from the Delaware Breakwater to Westville, NJ.

(a) *Location:* The following area is a safety zone:

(1) All waters within an area which extends 500 yards on either side and 1000 yards ahead and astern of the T/V LINEGAS while the vessel is in the loaded condition and underway in the area of the Delaware River and Delaware Bay bounded by the Coastal Eagle Point Refinery on the Delaware River, at Westville, NJ and the Delaware Breakwater.

(2) All waters within a 200 yd radius of the T/V LINEGAS while it is moored at the Coastal Eagle Point Refinery on the Delaware River, at Westville, NJ.

(b) *Effective Dates:* This rule is effective from 11:59 p.m. July 12, 1997, and terminates at 11:59 p.m. July 25, 1997, unless terminated sooner by the Captain of the Port, Philadelphia.

(c) *Definitions:*

(1) *Captain of the Port* or *COTP* means the Captain of the Port Philadelphia or any Coast Guard commissioned, warrant or petty officer authorized to act on his behalf.

(2) *Loaded Condition* means loaded with LHG that exceeds 2% of the vessel's cargo carrying capacity.

(d) No vessel may enter the safety zone unless its operator obtains permission of the Captain of the Port or his designated representative.

(e) As a condition of entry, the COTP may order that:

(1) All vessels operating within the safety zone must maintain a continuous radio guard on channels 13 and 16 VHF–FM while underway;

(2) Overtaking may take place only under conditions where overtaking is to be completed well before any bends in the channel. Before any overtaking, the pilots, masters, and operators of both vessels must clearly agree on all factors including speeds, time, and location of overtaking.

(3) Meeting situations on river bends shall be avoided to the maximum extent possible.

(4) The operator of any vessel in the safety zone shall proceed as directed by the Captain of the Port or by his designated representative.

(f) The senior boarding officer enforcing the safety zone may be contacted on VHF channels 13 & 16. The Captain of the Port of Philadelphia and the Command Duty Officer at the Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271–4940.

Dated: July 11, 1997.

John E. Veentjer,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia, PA.

[FR Doc. 97–19405 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI66–01–7242; FRL–5861–8]

Approval and Promulgation of Implementation Plans Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is temporarily delaying the ozone attainment date for Manitowoc County from 1996 to 2007. This action suspends the automatic reclassification of Manitowoc County from moderate to serious nonattainment. Final approval of the new attainment date is dependent upon the results of an attainment demonstration for both upwind and downwind areas. Wisconsin is working toward completion of this attainment demonstration (which is due in mid-1997 for the Lake Michigan States) in conjunction with Illinois, Indiana, and Michigan, following the Phase I/Phase II Ozone Transport Assessment Group approach outlined in EPA's March 2, 1995 guidance memorandum from Mary Nichols entitled ''Ozone Attainment Demonstrations''.

In this rulemaking, EPA is responding to Wisconsin's submittal of an overwhelming transport petition for Manitowoc County. Photochemical grid modeling was used to demonstrate that transport from upwind areas makes it ''practicably impossible'' for the county to attain the ozone National Ambient Air Quality Standard (NAAQS) by its original attainment date. EPA's action does not preclude the State of Wisconsin from submitting a request for redesignation to attainment for the county, based on three current years of clean air quality monitoring data.

DATES: This final rule will become effective on August 22, 1997.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following location:

Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rick Tonielli, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6068.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1994, the Wisconsin Department of Natural Resources submitted a petition to the EPA requesting temporary suspension of the automatic reclassification to serious nonattainment and delay of the attainment date (from 1996 to 2007) for three ozone moderate nonattainment counties (Manitowoc, Sheboygan, and Kewaunee). On May 15, 1996, the WDNR submitted a request for redesignation to attainment for the three moderate nonattainment areas based on 3 years of clean air quality data. On August 26, 1996, the counties of Sheboygan and Kewaunee were redesignated to attainment (61 FR 43668–43675). Manitowoc County was not redesignated to attainment due to violations of the ozone national ambient air quality standard (NAAQS) during the summer of 1996. As a result, the overwhelming transport request was applied solely to Manitowoc County.

On May 5, 1997, EPA published a rulemaking proposing approval of the overwhelming transport petition for Manitowoc County. A discussion of EPA's overwhelming transport policy and the modeling submitted by Wisconsin to demonstrate overwhelming transport is included in that proposed rulemaking (62 FR 24380-24383). During the 30 day public comment period for this final rule, EPA received adverse comments from a private party, who took the position that EPA should redesignate Manitowoc County to attainment.

II. Public Comment/EPA Response

Private Citizen Comment 1

Manitowoc County does not generate the air quality recorded at the Woodland Dunes ozone monitoring site.

EPA Response

EPA's overwhelming transport policy applies to areas which are violating the ozone NAAQS due to emissions occurring upwind. Wisconsin has demonstrated through photochemical grid modeling that overwhelming transport of ozone and its precursors into Manitowoc County is occurring; further, Wisconsin has shown that eliminating emissions in Manitowoc County would not bring the area into attainment. For this reason, EPA is taking action in this notice to grant a temporary delay of the attainment date for Manitowoc County from the end of 1996 to the end of the year 2007. Because the attainment date is no longer the end of 1996, EPA has no basis to reclassify Manitowoc to a serious nonattainment area for failure to attain by the end of 1996. This will mean that the automatic regulatory requirements that would otherwise be applied to Manitowoc County were it reclassified to serious will not be implemented.

Private Citizen Comment 2

If the Woodland Dunes monitor was moved inland, the area would meet the requirements for attainment.

EPA Response

The ozone monitor at the Woodland Dunes site is part of the Photochemical Assessment Monitoring Station (PAMS) network. Its location was chosen to establish the extreme downwind concentrations of ozone and its precursors being transported from the Milwaukee metropolitan area. The high concentrations measured at this site are representative of the ozone being transported into this downwind area. As mentioned previously, Wisconsin has verified through modeling that overwhelming transport is occurring.

Elevated concentrations are seen on high ozone days at the Woodland Dunes monitor; as the commenter points out, these concentrations are typically higher than those seen at the Manitowoc County inland monitor at the Collins Fire Tower. Ozone concentration measurements are needed from monitors along the lakeshore as well as inland to generate the information needed by EPA and Wisconsin to design strategies to reduce ozone and protect public health.

III. Final Action

The State submittal demonstrated through modeling that emissions from the Manitowoc County moderate nonattainment area do not contribute to the predicted concentrations in that area. It further demonstrated that the high modeled concentrations are due to transport from upwind areas. Therefore, Manitowoc County could not demonstrate modeled attainment of the Ozone National Ambient Air Quality Standards by the required attainment date, November 15, 1996, due to overwhelming transport from upwind areas that have a later attainment date of November 15, 2007. Because the upwind areas (e.g., Chicago and Milwaukee) do not have approved modeling analyses demonstrating that the Manitowoc County moderate nonattainment area could show attainment by a specific date, EPA approves Wisconsin's request to temporarily allow the Manitowoc County moderate nonattainment area to use the upwind area's attainment date of November 15, 2007. This action does not preclude the State from submitting a request for redesignation to attainment for Manitowoc County based on the 3 most recent years of clean air quality monitoring data. Approval of a permanent delay of the attainment date will be dependent on the results of the attainment demonstration for both the upwind and downwind areas, along with the additional provisions detailed in part II(B) of the attachment to the September 1, 1994, guidance memorandum.

IV. General Provisions

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

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

Regulatory Process

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant economic impact on any small entities.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, 1533, and 1535, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State,

local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this section, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved under this section may bind State, local, and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Approval of Wisconsin's emissions inventories does not impose any new requirements or have a significant economic impact on small entities.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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 this rule in today's **Federal Register.** This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds, Nitrogen oxides.

Authority: 42 U.S.C. 7401–7671(q).

Dated: July 9, 1997.

David A. Ullrich,

Acting Regional Administrator.

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

Part 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (l) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(l) Wisconsin's November 15, 1994 request for a temporary delay of the ozone attainment date for Manitowoc County from 1996 to 2007 and suspension of the automatic reclassification of Manitowoc County to serious nonattainment for ozone is approved, based on Wisconsin's demonstration through photochemical grid modeling that transport from upwind areas makes it ''practicably impossible'' for the County to attain the ozone National Ambient Air Quality Standard by its original attainment date.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In Section 81.350, the ''Wisconsin—Ozone'' table is amended by revising the entry for Manitowoc County to read as follows:

§ 81.350 Wisconsin

* * * * *

WISCONSIN—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Manitowoc County Area	1/6/92	Nonattainment	Aug. 22, 1997	Moderate.[2]
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date temporarily delayed until November 15, 2007.

* * * * *

[FR Doc. 97–19394 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7668]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain

management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

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

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State/location	Community no.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI				
Arkansas:				
Charleston, city of, Franklin County	050080	May 19, 1975, Emerg.; November 15, 1985, Reg.; July 17, 1997, Susp.	July 17, 1997	July 17, 1997.

State/location	Community no.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Franklin County, unincorporated areas	050432	July 15, 1987, Emerg.; July 17, 1997, Reg.; July 17, 1997, Susp.	.....do	Do.
Ozark, city of, Franklin County.	050358	February 5, 1975, Emerg.; March 15, 1982, Reg.; July 17, 1997, Susp..	.....do	Do.
New Mexico: Silver City, town of, Grant County.	350022	July 22, 1975, Emerg.; May 17, 1988, Reg.; July 17, 1997, Susp.	.....do	Do.
Region IX				
California:				
Amador County, unincorporated areas ..	060015	October 29, 1980, Emerg.; September 24, 1984, Reg.; July 17, 1997, Susp.	.....do	Do.
Jackson, city of, Amador County	060448	March 2, 1979, Emerg.; August 19, 1985, Reg.; July 17, 1997, Susp.	.....do	Do.

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

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

Issued: July 9, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–19366 Filed 7–22–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 94–19; FCC 97–214]

Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The adoption of this Memorandum Opinion & Order authorizes Lee Enterprises, Incorporated and similarly situated licensees to file requests for reductions of the FY 1994 regulatory fees for their satellite stations. The Commission recognized that the present policy of requiring licensees to pay separate fees for both full service and satellite stations could result in small market station licensees paying higher fees than larger market stations. The adoption of this order will offer licensees of both full service and satellite television stations an opportunity to receive a waiver or reduction of their FY 1994 regulatory fees.

DATES: Effective August 22, 1997.

FOR FURTHER INFORMATION CONTACT: Jerome D. Remson, Office of General Counsel, (202) 418–1780.

SUPPLEMENTARY INFORMATION:

Adopted: June 16, 1997;
Released: July 15, 1997.

1. Before the Commission for consideration is a Petition for Reconsideration and Clarification filed by Lee Enterprises, Incorporated (Lee) and a Response in support filed by the National Association of Broadcasters (NAB).

2. In *Implementation of Section 9 of the Communications Act,* 59 FR 30984, June 16, 1994, 9 FCC Rcd 5333, 5360–61, ¶ 82 (1994) *(FY 94 Report and Order),* the Commission noted that the fee schedule adopted by Congress made no distinction between the fees to be paid by fully operational television stations and those paid by satellite television station licensees. The Commission stated that it would not require satellite television licensees to pay a higher fee for a satellite station than a parent station or to pay a fee where the fee would ''cause a diminishment of'' the licensee's ability to continue to serve the public. On reconsideration, the Commission modified the standard for waiving or reducing satellite station regulatory fees. It recognized that satellite television stations generally serve rural or sparsely populated areas and that requiring the payment of separate fees for both full service and satellite stations could result in small market station licensees paying higher fees than larger market stations. Thus, the Commission stated that for those licensees that had timely filed petitions for reconsideration or for waiver or reduction of the regulatory fees for satellite stations, it would grant partial waivers and reduce the fees so each set of parent and satellite stations would pay a regulatory fee based on the total number of households served and would be assessed a single regulatory fee comparable to the fee assessed stations serving markets with the same number of television households. *Implementation of Section 9 of the Communications Act,* MM Docket 94–19, FCC 95–257, ¶ 19, released June 22, 1995 (*Reconsideration Order*), 60 FR 34902, July 5, 1995.

3. Lee now asks for clarification of the *Reconsideration Order* to permit it to request a reduction of its FY 1994 regulatory fees even though it had not requested a waiver or reduction in fees prior to the issuance of the *Reconsideration Order.* In view of the expanded grounds for reduction of the regulatory fee for satellite stations set forth in the *Reconsideration Order,* we shall grant the petition and authorize Lee and similarly situated licensees to file requests for reductions of the FY 1994 regulatory fees for their satellite stations.

4. Accordingly, it is ordered, that the Petition for Reconsideration and Clarification, filed July 24, 1995, by Lee Enterprises, Incorporated is granted.

5. It is further ordered, that licensees of both full service and satellite television stations may file petitions for reduction of their FY 1994 regulatory fees by August 22, 1997.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19353 Filed 7–22–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 95–60; FCC 97–188]

Uniform System of Accounts for Class A and Class B Telephone Companies To Raise the Expense Limit for Certain Items of Equipment From $500 to $750

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order (*Order*), the Commission raises the expense limit specified in its rules regarding Instructions for telecommunications plant accounts from $500 to $2,000, with one exception related to personal computers recorded in Account 2124, General purpose computers. The purpose of the expense limit is to reduce the cost of maintaining property records for the acquisition, depreciation, and retirement of a multitude of low-cost, high-volume assets. The Commission also adopts a five-year amortization period during which incumbent local exchange carriers (ILECs) may recover the undepreciated portion of embedded assets affected by this rule change. We will allow carriers to implement these changes effective January 1, 1998.

DATE EFFECTIVE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0844.

SUPPLEMENTARY INFORMATION: On March 1, 1994, USTA filed a Petition for Rulemaking to raise the expense limit in Section 32.2000(a)(4) from $500 to $2,000. USTA also requested that the carriers be permitted to amortize the net book cost of embedded assets that were purchased at prices ranging from $500 to $2,000 over each company's remaining asset life for accounts covered by the expense limit, which it indicated would result in amortization periods of three to five years. On March 23, 1994, the Commission issued a Public Notice inviting comments on USTA's petition. After reviewing the comments, the Commission issued the *Notice* in which it proposed to raise the expense limit to $750. Moreover, on May 31, 1994, USTA filed a Petition for Rulemaking to Amend Part 32 of the Commission's Rules to eliminate detailed property records for Accounts 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123.1, Office support equipment; 2123.2, Company communications equipment; and the personal computers and peripheral devices recorded in 2124, General purpose computers. In place of detailed property records, USTA requested that the Commission permit carriers to adopt a vintage amortization level (''VAL'') process. Under this process, a carrier would not track an asset over its life through a continuing property record system. Instead, it would assign each asset a life and retire the asset from its books of account at the end of the assigned life, regardless of whether it was still used in providing telecommunications service. A Public Notice inviting comments on this petition was released on May 10, 1995. All comments were taken under consideration. By raising the expense limit from $500 to $2,000 for Accounts 2115, 2116, 2122, 2123 and 2124 (except for PC components) in this *Order*, the Commission has greatly reduced the number of items carriers will need to capitalize. Accordingly, the May 31, 1994 petition is dismissed.

Regulatory Flexibility Analysis

We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the rules adopted in this *Order* because they will not have a significant economic impact on a significant number of small entities. Even if a substantial number of small entities were affected by the rules, there would not be a significant economic impact on those entities. These rules govern the accounting treatment of specific assets, in particular, whether their costs are expensed or capitalized. Capitalization is more administratively burdensome because it requires additional recordkeeping over a period of years. Because we are raising the limit under which items are expensed, the effect of this Order is to reduce regulatory burdens for all companies that use our Part 32 accounts.

Ordering Clause

Accordingly, *It Is Ordered*, pursuant to Sections 4(i), 4(j), 218, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 218, and 220, Part 32, Uniform System of Accounts for Telecommunications Companies, of the Commission's Rules IS AMENDED, as set forth below, effective January 23, 1998. Affected parties may elect to implement these changes on January 1, 1998.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 32 of title 47 of the CFR is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 is revised to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

2. Section 32.2000 is amended by revising paragraph (a)(4) to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(4) The cost of the individual items of equipment, classifiable to Accounts 2112, Motor vehicles; 2113, Aircraft; 2114, Special purpose vehicles; 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123, Office equipment; and 2124, General purpose computers, costing $2,000 or less or having a life less than one year shall be charged to the applicable Plant Specific Operations Expense accounts, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components, including initial operating software, of $500 or less shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

* * * * *

[FR Doc. 97–19351 Filed 7–22–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[FCC 97–243]

Notification of Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's regulations require carriers to notify Commission headquarters when certain service outages occur, but permit carriers to

notify the Commission's facility at Grand Island, Nebraska on a ''secondary basis.'' The Commission has closed the Nebraska facility and is designating as the secondary facility ''the FCC's Columbia Operations Center in Columbia, Maryland, or such other facility which the Commission may designate by regulation or (in the case of emergency) by public announcement.'' The order also clarifies that notification of the secondary facility is appropriate only when there is a telephone outage or similar emergency in Washington, DC.

EFFECTIVE DATE: July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Andre Rausch, 202–418–7277, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in FCC 97–243, adopted July 3, 1997, and released July 11, 1997. This item is available for inspection and copying during normal business hours in the Network Services Division Reference Room (Room 220), 2000 M Street, NW., Washington DC, or a copy may be purchased from the duplicating contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The Order will be published in the FCC Record.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply to this proceeding because the Commission is adopting this rule without notice and comment. See 5 U.S.C. 603(a) and 604(a). Notice and comment are not required because the Commission is modifying a ''rule of agency organization, procedure, or practice.'' See 5 U.S.C. 553(b)(A). Moreover, the Commission has found that notice and comment are unnecessary here. See 5 U.S.C. 553(b)(B).

Ordering Clauses

Accordingly, it is ordered, pursuant to Sections 1, 4(i), 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, and 303(r), that part 63 of the Commission's Rules, 47 CFR 63.100 is amended as set forth below, effective July 23, 1997.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 63 of title 47 is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403 and 533, unless otherwise noted.

2. Section 63.100 is amended as follows:

a. In paragraph (b) remove the third sentence and add two sentences in its place;

b. In paragraph (c) remove the third sentence and add two sentences in its place;

c. In paragraph (d) remove the third sentence and add two sentences in its place;

d. In paragraph (e) remove the third sentence of the introductory text and add two sentences in its place;

e. In paragraph (e)(2) remove the first sentence and add two sentences in its place; and

f. In paragraph (h)(2) remove the second sentence and add two sentences in its place.

§ 63.100 Notification of service outage.

* * * * *

(b) * * * Notification must be served on the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served on the Commission's Watch Officer on duty at the FCC's Columbia Operations Center in Columbia, MD, or at such other facility designated by the Commission by regulation or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. * * *

(c) * * * Notification must be served on the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served on the Commission's Watch Officer on duty at the FCC's Columbia Operations Center in Columbia, MD, or at such other facility designated by the Commission by regulation or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. * * *

(d) * * * Notification must be served on the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served on the Commission's Watch Officer on duty at the FCC's Columbia Operations Center in Columbia, MD, or at such other facility designated by the Commission by regulation or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. * * *

(e) * * * Notification must be served on the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served on the Commission's Watch Officer on duty at the FCC's Columbia Operations Center in Columbia, MD, or at such other facility designated by the Commission by regulation or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. * * *

* * * * *

(2) If there is to be a report to the Commission, a written or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served on the Commission's Watch Officer on duty at the FCC's Columbia Operations Center in Columbia, MD, or at such other facility designated by the Commission by regulation or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, D.C. * * *

* * * * *

(h) * * *

(2) * * * Notification must be served on the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served on the Commission's Watch Officer on duty at the FCC's Columbia Operations Center in Columbia, MD, or at such other facility designated by the Commission by regulation or (at the time of the emergency) by public announcement

only if there is a telephone outage or similar emergency in Washington, DC.
* * *

[FR Doc. 97–19354 Filed 7–22–97; 8:45 am]

BILLING CODE 6712–01–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Chapter 7, Appendix D

[AIDAR Notice 97–2]

RIN 0412–AA–31

Direct USAID Contracts for Personal Services Abroad

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended by revising and updating Appendix D, ''Direct-USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad'' in its entirety.

DATES: This rule is effective August 22, 1997.

FOR FURTHER INFORMATION CONTACT: M/OP/P, Mrs. Patricia L. Bullock, (703) 875–1534.

SUPPLEMENTARY INFORMATION: Specific changes to Appendix D include: (1) Removing the justification requirement for advisory and assistance services; (2) changing references to USAID's Handbook system, when possible, to the respective numbered reference in the Automated Directive System (ADS); (3) changing language to reflect the new identification of work in the New Management System (NMS); (4) revision of the Cover Page to reflect the coding in the NMS, as well as other administrative changes; (5) changing the class justification to apply only to those USPSCs contracted for in the Cooperating Country, and requiring the PSCs recruited outside the Cooperating Country be publicized on the Internet; (6) a clarification regarding who a USPSC may supervise; (7) removal of Prompt Pay language; (8) revising physical fitness and health room privileges by correcting amounts to be reimbursed for medicals for children 12 or under; (9) provision of a consumables allowance where appropriate; (10) revision of awards language to allow non-monetary awards; (11) adding the requirement that all USPSC positions must be classified and that approvals are required for certain positions; (12) incorporation of an optional schedule to be used for USPSCs when it is anticipated that incremental recurring cost funding will occur; (13) changing FS–1 salary to ES–6; and (14) adding guidance regarding subcontracting.

The changes being made by this rule are not considered ''significant'' under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This rule will not have an impact on a substantial number of small entities or require any information collection, as contemplated by the Regulatory Flexibility Act or the Paper Work Reduction Act respectively. Because of the nature and subject matter of this rule, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this rule or any other part of the AIDAR at anytime. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

Accordingly, for the reasons set forth above and under the authority of 22 U.S.C. 2381, as amended and E.O. 12163 of Sept. 29, 1979, Appendix D of 48 CFR Chapter 7 is revised to read as follows:

APPENDIX D—DIRECT USAID CONTRACTS WITH A U.S. CITIZEN OR A U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

1. *General.* (a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which USAID contracts with a U.S. citizen or U.S. resident alien for personal services abroad.

(b) *Definitions.* (1) *Personal services contract (PSC)* means a contract that, by its express terms or as administered, make the contractor personnel appear, in effect, Government employees (see FAR 37.104).

(2) *Employer-employee relationship* means an employment relationship under a service contract with an individual which occurs when, as a result of the contract's terms or the manner of its administration during performance, the contractor is subject to the relatively continuous supervision and control of a Government officer or employee.

(3) *Non-person services contract* means a contract under which the personnel rendering the services are not subject either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

(4) *Independent contractor relationship* means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under this relationship, the Government does not normally supervise the performance of the work, control the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) *Resident hire* means a U.S. citizen who, at the time of hire as a PSC, resides in the cooperating country as a spouse or dependent of a U.S. citizen employed by a U.S. government agency or under any U.S. government-financed contract or agreement, or for reasons other than for employment with a U.S. government agency or under any U.S. government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting are lawfully admitted permanent residents of the United States.

(6) *U.S. resident alien* means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

(7) *Abroad* means outside the United States and its territories and possessions.

(8) *USAID direct-hire employees* means civilian employees appointed under USAID Handbook 25 procedures or superseding Automated Directive System (ADS) Chapters.

2. *Legal Basis.* (a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (hereinafter referred to as the ''FAA'') provides the Agency's contracting authority.

(b) Section 636(a)(3) of the FAA (22 U.S.C. 2396(a)(3)) authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals ''* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission.'' [1]

3. *Applicability.* (a) This appendix applies to all personal services contracts with U.S. citizens or U.S. resident aliens to provide assistance abroad under Section 636(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Nonpersonal services contracts with U.S. citizens or U.S. resident aliens; such contracts are covered by the basic text of the FAR (48 CFR Chapter 1) and the AIDAR (48 CFR Chapter 7).

(2) Personal services contracts with individual Cooperating Country Nationals (CCNs) or Third Country Nationals (TCNs). Such contracts are covered by Appendix J of this chapter.

(3) Other personal services arrangements covered by USAID Handbook 25—Employment and Promotion or superseding ADS Chapters.

(4) Interagency agreements (e.g., PASAs and RSSAs covered by ADS 306—Interagency Agreements.

4. *Policy.* (a) *General.* USAID may finance, with either program or operating expense (OE) funds, the cost of personal services contracts as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Under the authority of Section 635(h) of the FAA, program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating Expense Funds.* Pursuant to USAID budget policy, OE funded salaries and other recurrent cost items may be forward funded for a period of up to three (3) months

[1] The Civil Service Commission is now the Federal Office of Personnel Management.

beyond the fiscal year in which these funds were obligated. Non-recurring cost items may be forward funded for periods not to exceed twenty-four (24) months where necessary and appropriate to accomplishment of the work.[2]

(b) *Limitations on Personal Services Contracts.* (1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A–76 for a representative list of such activities.

(3) Notwithstanding any other provision of USAID directives, regulations or delegations, U.S. citizen personal services contractors (USPSCs) may be delegated or assigned any authority, duty or responsibility delegable to U.S. citizen direct-hire employees (USDH employees) except that:

a. They may not supervise U.S. direct-hire employees of USAID or other U.S. Government agencies. They may supervise USPSCs and non-U.S. citizen employees.

b. They may not be designated as Contracting Officers or delegated authority to sign obligating or subobligating documents.

c. They may represent the agency, except that communications that reflect a final policy, planning or budget decision of the agency must be cleared by a USDH employee.

d. They may participate in personnel selection matters, but may not be delegated authority to make a final decision on personnel selection.

e. Exceptions to the limitations in this paragraph (b)(3) must be approved by the Assistant Administrator for Management (AA/M).

(c) *Withholdings and Fringe Benefits.* (1) Personal services contractors (PSCs) are Government employees for purposes of the Internal Revenue Code (Title 26 of the United States Code) and are, therefore, subject to social security (FICA) and Federal income tax (FIT) withholdings. As employees, they are ineligible for the ''foreign earned income'' exclusion under the Internal Revenue Service (IRS) regulations (see 26 CFR 1.911–3(c)(3)).

(2) Personal services contractors are treated on par with other Government employees, except for programs based on any law administered by the Federal Office of Personnel Management (e.g., incentive awards, life insurance, health insurance, and retirement programs covered by 5 CFR Parts 530, 531, 831, 870, 871, and 890). While PSCs are ineligible to participate in any of these programs, the following fringe benefits are provided as a matter of policy:

(i) The employer's FICA contribution for retirement purposes.

(ii) A contribution against the actual cost of the PSC's annual health and life insurance costs. Proof of health and life insurance coverage and its actual cost to the PSC shall be submitted to the Contracting Officer before any contribution is made. (See also paragraph 4(c)(3) of this Appendix.)

(A) The contribution for health insurance shall not exceed 50% of the actual cost to the PSC for his/her annual health insurance, or the maximum U.S. Government contribution for a direct-hire employee, as announced annually by the Office of Personnel Management, whichever is less. If the PSC is covered under a spouse's health insurance plan, where the spouse's employer pays some or all of the health insurance costs, the cost to the PSC for annual health insurance shall be considered to be zero.

(B) The contribution for life insurance shall be up to 50% of the actual annual costs to the PSC for life insurance, not to exceed $500.00 per year.

(iii) PSCs shall receive the same percentage pay comparability adjustment as U.S. Government employees subject to the availability of funds.

(iv) PSCs shall receive a 3% annual salary increase subject to satisfactory performance documented in their annual written evaluation. Such increase may not exceed 3% without a deviation. This 3% limitation also applies to extensions of the same service or negotiations for a new contract for the same or similar services unless a deviation has been approved.

(v) PSCs shall receive the following allowances and differentials provided in the State Department's Standardized Regulations (Government Civilians Foreign Areas) on the same basis as U.S. Government employees (except for U.S. resident hires, see paragraph 4(d) and Section 12, General Provisions, Clause 22, ''U.S. Resident Hire Personal Services Contractors''):

(A) Temporary lodging allowance (Section 120),[3]

(B) Living quarters allowance (Section 130),[3]

(C) Post allowance (Section 220),[3]

(D) Supplemental post allowance (Section 230),[3]

(E) Separate maintenance allowance (Section 260),[4]

(F) Education allowance (Section 270),[4]

(G) Educational travel (Section 280),[4]

(H) Post differential (Section 500),

(I) Payments during evacuation/authorized departure (Section 600), and

(J) Danger pay (Section 650).

(vi) Any allowance or differential that is not expressly stated in paragraph 4(c)(2)(v) is not authorized for any PSC unless a deviation is approved. The only exception is a consumables allowance if authorized for the post under Handbook 22 or superseding ADS Chapter.

(vii) Health room services may be provided in accordance with the clause of this contract entitled ''Physical Fitness and Health Room Privileges.''

(viii) PSCs are eligible to receive benefits for injury, disability, or death under the Federal Employees' Compensation Act since the law is administered by the Department of Labor not the Office of Personnel Management.

(ix) PSCs are eligible to earn four hours of annual leave and four hours of sick leave for each two week period. However, PSCs with previous PSC service (not previous U.S. Government civilian or military service) earn either six hours of annual leave for each two week period if their previous PSC service exceeds 3 years (including 10 hours annual leave for the final pay period of a calendar year), or eight hours of annual leave for each two week period if their previous PSC service exceeds 15 years.

(3) A PSC who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraph 4(c)(2)(ii) of this appendix.

(4) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contract (since the Government will normally have already paid its contribution for the retiree) unless the employee can prove to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If coverage overseas is excluded, then eligibility as cited in paragraph 4(c)(3) applies.

(5) Retired U.S. Government employees may be awarded Personal Services Contracts without any reduction in or offset against their Government annuity.

(d) *U.S. Resident Hire Personal Services Contractors.* U.S. resident-hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances unless such individuals can demonstrate to the satisfaction of the Contracting Officer that they have received similar benefits and allowances from their immediately previous employer in the cooperating country, or the Mission Director may determine that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

(e) *Determining Salary for Personal Services Contractors.* (1) There are two separate and distinct methods of establishing a salary for personal services contractors. Use of method number 1 is required unless justified and approved as provided for in paragraph (e)(1)(ii).

(i) *Method 1:* Salaries for Personal Services Contractors shall be established based on the market value in the United States of the position being recruited for. This requires the Contracting Officer in coordination with the Technical Officer to determine the correct market value (a salary range) of the position to be filled. This method is required in establishing salary for all PSCs unless method 2 is authorized as provided for in paragraph (e)(1)(ii). Contract Information Bulletin (CIB) 96–8 dated February 23, 1996 provides a guide which contains information concerning Preparation of Scopes of Work, Determination of Salary Class Grade, Salary Class Bench Marks and Salary Class Review. The market value of the position then becomes the basis along with the applicants' certified salary history on the SF 171, ''Personal Qualifications Statement'' for salary negotiations by the Contracting Officer. The SF 171 must be retained in the

[2] If there is a need, these contracts may be written for 5 years also but funded only as outlined in paragraph 4(a) of this Appendix.

[3] Mission Directors may authorize per diem in lieu of these allowances.

[4] These allowances are not authorized for short tours (i.e., less than a year).

permanent contract file. Any position which is determined to be above the GS–13 equivalent and exceeds six months in duration must be classified by M/HR/POD. The crucial point is the establishment of a realistic and reasonable market value for a job. The final determination regarding the reasonableness of a salary level rests with the Contracting Officer. Paying salaries using this method avoids ''rank in person'' salaries which are in excess of the value of the job being contracted for.

(ii) *Method 2:* If approved in writing by the Mission Director or the cognizant Assistant Administrator, based on written justification, salary may be negotiated based on the applicant's current earnings adjusted in accordance with the factors set out in paragraphs (e)(1)(ii) (A) through (C). This approval requirement cannot be redelegated. Current earnings must be certified by the contractor on the SF 171, (see paragraph 6(b)(3) of this appendix). This is guidance for establishing initial salaries, not subsequent increases, for the same contractor performing the same function.

(A) As a rule, up to a 3 percent increase above current earnings may be given. However, a 3 percent increase is awarded only to a PSC whose earnings are based on a period of twelve months or more; 2 percent for established earnings of less than twelve months but not less than four months; or 1 percent for established earnings during the past four months.

(B) Additional percentages may be given for the following factors. If a PSC has worked in a developing country for more than two years, an additional 1 percent may be awarded. Education related to the area of specialization and above the minimum qualification required may warrant an additional 1 percent, and those specialties for which there is keen competition in the employment market or a serious shortage category nationwide may be awarded an additional 2 percent. In addition, related technical experience over 5 years may increase the percentage by 1 and over ten years by 3.

(C) All requests for an initial rate of pay above 10 percent over current earnings must be approved in writing by the appropriate Assistant Administrator or Mission Director. Current earnings are actual earnings for work reasonably related to the position for which the applicant is being considered. Paragraphs 4(e)(1)(ii) (A) through (C) apply only to salary setting method number 2 in paragraph 4 (e)(1)(ii).

(2) When an applicant has no current earnings history (e.g., a person returning to the workforce after an absence of a number of years) or when an applicant's current earnings history doesn't accurately reflect the applicant's job market worth (e.g., a Peace Corps volunteer), every effort should be made to establish a market value for the position as a basis for negotiation, notwithstanding the lack of a current earnings history, provided that the applicant has the full qualifications for the job and could command a similar salary in the open job market.

(3) Salaries in excess of the ES–6 level must also be approved by the Procurement Executive based upon a memorandum through the appropriate Assistant Administrator or Mission Director and Contracting Officer, as provided for in internal guidelines on ''Approval Procedures for Contractor Salaries''. This approval level cannot be redelegated.

(f) *Incentive Awards.* U.S. PSCs are not eligible to receive monetary awards. They are eligible for non-monetary awards such as certificates.

(g) *Annual Salary Increase.* PSC contracts written for more than one year should provide for a 3% annual increase based on satisfactory performance documented in their annual written evaluations.

(h) *Pay Comparability Adjustment.* PSCs shall receive the same percentage pay comparability adjustment as that received by U.S. Government employees subject to the availability of funds.

(i) *Subcontracting.* PSCs are U.S. Government employees and may not be called upon (or permitted) to subcontract out any part of their work. Funds for subcontracting have no place in the budget of a personal services contract. Support services, equipment, and supplies (e.g., typing and report preparation, paper, pens, computers, and furniture) should be furnished to PSCs just as they would be to direct-hire employees. To the extent that direct-hire personnel may be authorized to purchase supporting services or supplies under a travel authorization, so may PSCs; otherwise, contracts for personal services should not contain any funds for procurement.

5. *Soliciting for Personal Services Contracts.* (a) *Technical Officer's Responsibilities.* The Technical Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request (the Acquisition & Assistance Request Document) e.g., the request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS equivalent position should cost, including basic salary, allowances, and differentials, if appropriate; and

(5) A list of Government or host country furnished items (e.g., housing).

(b) *Contracting Officer's Responsibilities.* (1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of SF 171s and SF 171As. (Upon receipt, one copy of each SF 171 and SF 171A shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions as appropriate, as well as the FAR Clauses to be incorporated in full text and by reference.

(iv) A copy of the USAID General Notice entitled ''Employee Review of the New Standards of Conduct''.

(2) The Contracting Officer shall comply with the requirements of (48 CFR) AIDAR 706.302–70(c) as detailed in paragraph 5(c) except those recruited from the U.S.

(c) *Competition.* (1) Under (48 CFR) AIDAR 706.302–70(b)(1), Personal Services Contracts (except those recruited from the U.S.) are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) *PSCs With Untied States Citizens or Resident Aliens Recruited from Outside the Cooperating Country.* Solicitations for PSCs recruited outside the cooperating country must be publicized via the Agency's External Home Page on the Internet under the caption ''Business & Procurement, USAID Procurements.'' Instructions regarding how to access the External Internet and the information to be provided have been approved and included in a CIB. A justification under FAR 6.303 is not required when this procedure is followed.

(3) A class justification was approved by the USAID Procurement Executive to satisfy the requirements of (48 CFR) AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303. This class justification for Personal Services Contracts with U.S. Citizens may only be used for those who are recruited locally subject to the following conditions:

(i) The position was publicized locally in accordance with established Mission policy or procedure, or the procedures in paragraph 5(c)(ii) was followed;

(ii) As an alternative to the procedures in paragraphs 5(c) (i) and (ii), at least 3 individuals were considered by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation.

(iii) Extensions or renewals with the same individual for continuing services do not need to be publicized.

(iv) A copy of the class justification (which was distributed to all USAID Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to (48 CFR) AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(4) If the appropriate competitive procedure in paragraph 5(3) is not followed, the Contracting Officer must prepare a separate justification as required under (48 CFR) AIDAR 706.302–70(c)(2).

(5) Since the award of a Personal Services Contract is based on technical qualifications, not price, and since the SF 171, ''Personal

Qualifications Statement'', and SF 171A, ''Continuation Sheet for Standard Form 171'', are used to solicit for such contracts, FAR subparts 15.4 and 15.5 and FAR parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this Appendix shall govern.

6. *Negotiating a Personal Services Contract.* Negotiating a Personal Services Contract is significantly different from negotiating a nonpersonal services contract because it establishes an employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Technical Officer's Responsibilities.* The Technical Officer shall be responsible for reviewing and evaluating the applications (i.e., SF 171s) received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's Responsibilities.* (1) The Contracting Officer shall forward a copy of each SF 171 received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Technical Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. Normally, the Contracting Officer shall negotiate only the salary (see the salary setting coverage in paragraph 4(e) of this Appendix). The terms and conditions of the contract, including differentials and allowances, are not negotiable or waivable without a properly approved deviation (see (48 CFR) AIDAR 701.470). If the Contracting Officer can negotiate a salary that is fair and reasonable, then the award shall be made.

(3) The Contracting Officer shall use the certified salary history on the SF 171 as the basis for salary negotiations, along with the market value of the position being recruited for (unless approval not to use market value has been granted under paragraph 4(e)(1)(ii)), and the Technical Officer's cost estimate.

(4) The Contracting Officer will obtain two copies of IRS Form W–4, ''Employee's Withholding Allowance Certificate'', from the successful applicant. (Upon receipt, the Contracting Officer will forward one copy of the W–4 to the Office of the Controller.)

(5) Security clearance is required for all U.S. citizens entering into USAID PSCs. The Contracting Officer will obtain four sets of SF 86, ''Security Investigation Data for Sensitive Position'', from the successful applicant and forward them to the Office of Security. PSCs may receive a preliminary clearance and be placed under contract prior to receipt of clearance provided the appropriate paper work has been completed, reviewed by IG/SEC/PSI and acknowledged as a ''no objection'' to the appropriate Mission. See General Provision 24 in section 12 of this Appendix.

7. *Executing a Personal Services Contract.* Contracting Officers or Heads of Contracting Activities, whether USAID/W or Mission, may execute Personal Services Contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them. In executing a Personal Services Contract, the Contracting Officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A Request Number covering the proposed contract has been received;

(c) The position has been classified by either the Mission or M/HR/POD (see CIB 96–8) and the classification is in the contract file;

(d) The proposed Statement of Duties is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable to the use of a Personal Services Contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The Statement of Duties does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this Appendix); and

(3) There is no apparent conflict of interest involved (if the Contracting Officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel);

(e) Selection of the contractor is documented and justified. (48 CFR) AIDAR 706.302–70(b)(1) provides an exception to the requirement for full and open competition for Personal Services Contracts abroad (see paragraph 5(c) of this Appendix);

(f) The standard contract format prescribed for Personal Services Contracts (Sections 10, 11, 12 and 13 to this Appendix) is used; or that any necessary deviations are processed as required by (48 CFR) AIDAR 701.470.

(**Note:** The prescribed contract format is designed for use with contractors who are residing in the U.S. when hired. If the contract is with a U.S. citizen residing in the cooperating country when hired, contract provisions governing physical fitness and travel/transportation expenses, and home leave, allowances, and orientation should be suitably modified (see paragraph 4(d) of this Appendix)).

These modifications are not considered deviations subject to (48 CFR) AIDAR 701.470. (Justification and explanation of these modifications is to be included in the contract file);

(g) Orientation is arranged in accordance with General Provision 23 in section 12 of this Appendix;

(h) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(i) The contract is complete and correct and all information required on the contract Cover Page (USAID Form 1420–36A) has been entered;

(j) The contract has been signed by the Contracting Office and the contractor, and fully executed copies are properly distributed;

(k) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties;

(1) Evidence of job classification in the file by the Mission except for grade equivalents above GS–13. For those positions with grade equivalent above GS–13, evidence of job classification done by M/HR/POD;

(2) Security clearance, including the completed SF 86, to the extent required by USAID Handbook 6, Security or superseding ADS Chapter, (see General Provisions 14 and 24 in section 12 of this Appendix);

(3) Mission, host country, Human Resources Office, and technical office clearance, as appropriate;

(4) Medical examinations and certifications as required by the contract general provision entitled ''Physical Fitness and Health Room Privileges'';

(5) One original executed IRS Form W–4 entitled ''Employee's Withholding Allowance Certificate'', and one copy, shall be obtained. The original shall be sent to the Controller of the paying office and one shall be placed in the contract file;

(6) Evidence of DAA/HR clearance that the position may be filled by PSC.

(7) The approval for any salary in excess of ES–6, in accordance with Appendix G of this chapter;

(8) A copy of the class justification or other appropriate explanation and support required by (48 CFR) AIDAR 706.302–70, if applicable;

(9) Any deviation to the policy or procedures of this appendix, processed and approved under (48 CFR) AIDAR 701.470;

(10) A fully executed SF 171, and a copy of the position classification, and approved deviation, if appropriate;

(11) The Memorandum of Negotiation; and

(12) The Contracting Officer's signed certification that competition requirements have been satisfied as described in paragraph 5(c) of the policy text of this Appendix. The certification shall be a part of the Memorandum of Negotiations.

(l) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 1341 (the Contracting Officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(m) The contractor receives and understands the USAID General Notice entitled ''Employee Review of the New Standards of Conduct'' and a copy is attached to each contract as provided for in paragraph (c) of General Provision 1, section 12;

(n) Agency conflict of interest requirements as set out in the General Notice ''Employee Review of the New Standards of Conduct'' are met by the contractor prior to his/her reporting for duty;

(o) A copy of a Checklist for Personal Services contractors which may be in the format set out in this section or another format convenient for the Contracting Officer, provided that a memorandum containing all of the information described in this section 7 shall be prepared for each PSC and placed in the contract file;

(p) The contractor understands that he/she is an employee of the United States for purposes of the Foreign Assistance Act of 1961, as amended, and the Internal Revenue

Code (Title 26 of the United States Code). This subjects the employee to withholding for both FICA and Federal Income Tax and precludes the employee from receiving the Federal Earned Income Tax exclusion of 26 U.S.C. Section 911. See Special Note on the Cover Page of USAID Form 1420–36.

(q) The contractor also understands that he/she may commence work prior to the completion of the security clearance. However, until such time as clearance is received, the contractor may not have access to classified or administratively controlled materials. Failure to obtain clearances will constitute cause for termination.

8. *Post Audit.* The Inspector General, or his/her designee, audits the Personal Services Contracts of all contracting activities for the purpose of ensuring conformance to applicable policy and regulations.

9. *Contracting Format.* The prescribed Contract Cover Page, Contract Schedule, General Provisions, and appropriate Federal Acquisition Regulations (FAR) clauses for Personal Services Contracts covered by this appendix are included as follows:

10. *Form USAID 1420–36, ''Cover Page'' and ''Schedule''.*

11. *Optional Schedule With a U.S. Citizen or U.S. Resident Alien.*

12. *General Provisions.*

13. *FAR Clauses to be Incorporated in Full Text in Personal Services Contracts.*

14. *FAR Clauses to be incorporated by reference in Personal Services Contracts.*

10. Form USAID 1420–36, ''Cover Page'' and ''Schedule''.

Contract With a U.S. Citizen or U.S. Resident Alien for Personal Services Abroad—Form AID 1420–36A (11/96) (Cover Page)

BILLING CODE 6116–01–M

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

Ethics Code *("X" Appropriate Box)* ☐ N ☐ C ☐ P

Negotiated Pursuant to Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223	Contract Number	
Country of Performance	Amount Obligated This Action	Total Estimated Contract Cost $
Contract For Technical Services	Request Document Number	
For	Contractor *(Name, Street, City, State, Postal Zone)*	
Contracting Office *(Name and Address)*		
Administered By *(If other than Contracting Office)*	Effective Date	Estimated Completion Date
Cognizant Scientific/Technical Office *(Name, Office Symbol, Address)*	Accounting and Appropriation Data Resource Category ____ Organization ____ Request ID ____ Activity ____ Fund ____ Fund Account ____ Allotment Symbol ____ Nationality ____ Social Security Number ____	
Supervising Officer	Green Card Holder ☐ Yes ☐ No	
Payment Will be Made By	Type of Advance *("X" Appropriate Box)* ☐ INITIAL ☐ NONE AUTHORIZED	

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

SPECIAL NOTE: As an employee for purposes of Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, *(22 USC 2396(a)(3))*, the Contractor is generally an employee of the United States for purposes of laws other than those administered by the Office of Personnel Management *(i.e., Title 5, United States Code)*. This includes being an employee of the United States for purposes of Title 26, United States Code, which subjects the Contractor to withholding for both FICA and Federal Income Tax, and precludes the Contractor from receiving the federal earned income tax exclusion of 26 USC Section 911.

(Fill In Appropriate Spaces)

This Contract consists of this Cover Pager, the Schedule of _____pages, including the Table of Contents,

The General Provisions Section 11 and Section 12 FAR Clauses by reference.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By *(Signature of Contracting Officer)*
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36A (11/96)

BILLING CODE 6116–01–C

PRIVACY ACT STATEMENT

This information is provided pursuant to Public Law 93–579 (Privacy Act of 1974), December 31, 1974, for individuals who complete this form.

The Executive Office of the President, Office of Management and Budget has required that all departments and agencies comply with the reporting requirements of Section 6041 of the Internal Revenue Code, Section 6041 states that all departments and agencies making payments totalling $600 or more in one year to a recipient for services provided must be reported to the Internal Revenue Service (IRS). The SSN and all financial numbers will be disclosed to U.S. Agency for International Development (USAID) payroll office personnel and personnel in the Department of the Treasury, Division of Disbursements. USAID will use this SSN to complete Form W–2 of the Code on employee compensation. Disclosure by the personal services contractor of the SSN is necessary to obtain the services, benefits or processes provided by this contract. Disclosure of the SSN may be made outside USAID (a) pursuant to any applicable routine use listed in USAID's Notice for implementing the Privacy Act as published in the Federal Register or (b) when disclosure by virtue of a contract being a public document after signatures is authorized under the Freedom of Information Act.

Schedule

(The Illustrated Schedule consists of this Table of Contents—Articles I–VI, and the General Provisions.)

TABLE OF CONTENTS

Article I—Statement of Duties
Article II—Period of Service Overseas
Article III—Contractor's Compensation and Reimbursement in U.S. Dollars
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses

General Provisions:

The following provisions numbered as shown below omitting number(s) _____, are the General Provisions (GPs) of this Contract:

1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security, Federal Income Tax and Foreign Earned Income
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Release of Information
18. Notices
19. Reports
20. Use of Pouch Facilities
21. Biographical Data
22. Resident Hire PSC
23. Orientation and Language Training
24. Conditions for Contracting Prior to Receipt of Security Clearance
25. Medical Evacuation Services
26. Governing Law

For each tour of duty, attach the applicable General Provisions.

Schedule: (**Note:** Use of the following Schedule Articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract).

Article I—Statement of Duties

(The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Any USAID consultation or orientation.)

Article II—Period of Service Overseas

Within _____ days after written notice from the Contracting Officer that all clearances, including the doctor's statement of medical opinion required under General Provision Clause 4, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to _____ where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately _____ in _____. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars

A. Except to the extent reimbursement is payable in the currency of the Cooperating Country pursuant to Article IV, USAID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately _____ (days) (weeks) (months) (years) which is to include:

(1) vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause 5);

(2) _____ days for authorized travel (GP Clause 10); and

(3) _____ days for orientation and consultation in the United States (GP Clause 23).

C. Allowable Costs: 1. Compensation at the rate of $_____ per (year) (month) (week) (day). Adjustments in compensation (pay) for periods when the contractor is not in compensable pay status shall be calculated as follows:

Rate of $_____ per (day) (hour).

Contingency for Compensation (Pay Comparability) Adjustments. $_____.

Annual Salary increase (3%) $_____.

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.) $_____.

* 3. Overseas Differential (Ref. GP Clause No. 6.) Rate $_____ and Contingency $_____=Total $_____.

** 4. Allowances in Cooperating Country (Ref. GP Clause 6.) $_____.

** 5. Travel and Transportation (Ref. GP Clause 10.) (Includes the value of GTRs furnished by the Government, not payable to contractor). $_____.

a. United States $_____

b. International $_____

c. Cooperating and Third Country $_____

Subtotal Item 5 $_____

** 6. Subsistence or Per Diem (Ref. GP Clause 10.)

a. Untied States $_____

b. International $_____

c. Cooperating and Third Country $_____.

Subtotal Item 6 $_____

7. Other Direct Costs.

a. Health and Life Insturance $_____

b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8.) $_____

c. Physical Examination (Ref. GP Clause 3.) $_____

d. Communications, Miscellaneous. $_____

Subtotal Item 7 $_____

8. F.I.C.A.–U.S.G. Contribution (not payable to contractor). $_____

D. Maximum U.S.-Dollar Obligation:

In no event shall the maximum U.S.-dollar obligation under this contract exceed $_____. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General: The contractor shall be provided with or reimbursed in local currency (_____) for the following:

[Complete]

B. Method of Payment of Local Currency Costs: Those contract costs which are specified as local currency costs in paragraph A above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provision Clause 11. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

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* If post differential is applicable to the assigned post, a contingency for the adjusted amount of differential resulting from compensation (pay comparability) adjustment should be included.

** Do not include the value of any costs to be paid or reimbursed in local currency.

[Complete]

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

(Additional Schedule Clauses may be added such as the implementation of General Provisions or Additional Clauses.)

11. Optional Schedule With a U.S. Citizen or U.S. Resident Alien

A U.S. Citizen or a U.S. Resident Alien PSC Contract No. _____

TABLE OF CONTENTS

(Optional Schedule)

(Use of the Optional Schedule is not mandatory. It is intended to serve as an alternate procedure for OE funded U.S. PSCs or U.S. Resident Alien PSCs. The Schedule is for use when the Contracting Officer anticipates incremental recurring cost funded contracts.

Use of the Optional Schedule eliminates the need to amend the contract each time funds are obligated. However, the Contracting Officer is required to amend each contract not less than twice during a 12 month period to ensure that the contract record of obligations is up to date and agrees with the figures in the master funding document.)

The Schedule on pages _____ thru _____ consists of this Table of Contents and the following Articles:

Article I—Statement of Duties
Article II—Period of Service Overseas
Article III—Contractor's Compensation and Reimbursement in U.S. Dollars
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses

General Provisions:

The following provisions, numbered as shown below, omitting number(s) _____, are the General Provisions (GP) of this Contract:

1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars of Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Release of Information
18. Notices
19. Reports
20. Use of Pouch Facilities
21. Biographical Data
22. Resident Hire PSC
23. Orientation and Language Training
24. Conditions for Contracting Prior to Receipt of Security Clearance
25. Medical Evacuation Services
26. Governing Law

For each tour of duty, attach the applicable General Provisions.

Article I—Statement of Duties.

(The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Any USAID consultation or orientation.)

Article II—Period of Service Overseas.

Within _____ days after written notice form the Contracting Officer that all clearances, including the doctor's statement of medical opinion required under General Provision Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to _____ where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately _____ in _____. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars.

A. Except to the extent reimbursement is payable in the currency of the Cooperating Country pursuant to Article IV, USAID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately _____ (days) (weeks) (months) (years) which is to include:

1. Vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause 5);

2. _____ days for authorized travel (GP Clause 10); and

3. _____ days for orientation and consultation in the United States (GP Clause 23).

C. Allowable Costs: 1. The following illustrative budget details allowable costs under this contract and provides estimated incremental recurrent cost funding in the total amount shown. Additional funds for the full term of this contract will be provided by the preparation of a master PSC funding document issued by the Mission Controller for the purpose of providing additional funding for a specific period. The master PSC funding document will be attached to this contract and will form a part of the executed contract while also serving to amend the budget.

2. Compensation at the rate of $_____ per (year) (month) (week) (day). Adjustments in compensation (pay) for periods when the contractor is not in compensable pay status shall be calculated as follows:

Rate of $_____ per (day) (hour).

Contingency for Compensation (Pay Comparability Adjustments.) $_____

Annual Salary increase (3%) $_____

3. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.) $_____

* 4. Overseas Differential (Ref. GP Clause No. 6.) Rate $_____ and Contingency $_____ = Total $_____.

** 5. Allowances in Cooperating Country (Ref. GP Clause 6.) $_____

** 6. Travel and Transportation (Ref. GP Clause 10.) (Includes the value of GTRs furnished by the Government, not payable to contractor). $_____.

a. United States $_____

b. International $_____

c. Cooperating and Third Country $_____

Subtotal Item 6 $_____

**7. Subsistence or Per Diem (Ref. GP Clause 10.)

a. United States $_____

b. International $_____

c. Cooperating and Third Country $_____

Subtotal Item 7 $_____

**8. Other Direct Costs

a. Health and Life Insurance (Ref. GP Clause 9.) $_____

b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8.) $_____

c. Physical Examination (Ref. GP Clause 3.) $_____

d. Communications, Miscellaneous Subtotal Item 8 $_____

9. F.I.C.A.—U.S.G. contribution (not payable to contractor). $_____

D. Maximum U.S.-Dollar Obligation: In no event shall the maximum U.S.-dollar obligation under this contract exceed $_____.

E. Salary changes and personnel-related contract actions will be made by processing the same forms as used in making such changes and actions for direct-hire employees. When issued by the Contracting Officer, the forms utilized will be attached to the contract and will form a part of the contract terms and conditions.

F. Any adjustment or increase in the compensation granted to direct-hire employees will be allowed for in PSCs subject to the availability of funds. Such an adjustment will be effected by a mass pay adjustment notice from the Contracting Officer, which will be attached to the contract and form a part of the executed contract.

G. At the end of each year of satisfactory service, PSC contractors will be eligible to receive an increase equal to 3% pending availability of funds provided their services

* If post differential is applicable to the assigned post, a contingency for the adjusted amount of differential resulting from compensation (pay comparability) adjustment should be included.

** Do not include the value of any costs to be paid or reimbursed in local currency.

have been satisfactory. Such increase will be effected by the execution of an SF–1126, payroll change slip which is to be attached to each contract and each action forms a part of the official contract file.

H. The master PSC funding document may not exceed the term or estimated total cost of this contract. Notwithstanding that additional funds are obligated under this contract through the issuance and attachment of the master PSC funding document, all other contract terms and conditions remain in full effect.

Article IV—Costs Reimbursable and Logistic Support

A. General: The contractor shall be provided with or reimbursed in local currency (_____) for the following:

[Complete]

B. Method of Payment of Local Currency Costs: Those contract costs which are specified as local currency costs in paragraph A above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provision Clause 12. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

(Additional Schedule Clauses may be added such as the implementation of General Provisions or Additional Clauses.)

12. General Provisions

Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

The following clauses are to be used (when applicable), for both tours of duty of less than 1 year as well as 1 year or more.

INDEX OF CLAUSES

1. Definitions
2. Compliance with Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security, Federal Income Tax, and Foreign Earned Income
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Release of Information
18. Notices
19. Reports
20. Use of Pouch Facilities
21. Biographical Data
22. U.S. Resident Hire Personal Services Contractor
23. Orientation and Language Training
24. Conditions for Contracting Prior to Receipt of Security Clearance
25. Medical Evacuation (MEDEVAC) Services
26. Governing Law

1. Definitions (June 1990)

(a) *USAID* shall mean the Agency for International Development.

(b) *Administrator* shall mean the Administrator or the Deputy Administrator of USAID.

(c) *Contracting Officer* shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) *Contractor* shall mean the individual engaged to serve under this contract.

(e) *Cooperating Country* shall mean the foreign country in or for which services are to be rendered hereunder.

(f) *Cooperating Government* shall mean the government of the Cooperating Country.

(g) *Government* shall mean the United States Government.

(h) *Local currency* shall mean the currency of the Cooperating Country.

(i) *Mission* shall mean the United States USAID Mission, or principal USAID office, in the Cooperating Country, or USAID/Washington (USAID/W).

(j) *Mission Director* shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(k) *Technical Officer* shall mean the USAID official to whom the contractor reports, and who is responsible for monitoring the contractor's performance.

(l) *Tour of duty* shall mean the contractor's period of service under this contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) *Traveler* shall mean—

(1) The contractor in authorized travel status or

(2) Dependents of the contractor who are in authorized travel status.

(n) *Dependents* means:

(1)Spouse.

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) Parents (including step and legally adoptive parents) of the employee or of the spouse, when such parents are at least 51 percent dependent on the contractor for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(o) *U.S. Resident Alien*, as used in this contract, shall mean an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid ''Alien Registration and Receipt Card'' (Immigration and Naturalization Service forms I–151 or I–551).

(p) *U.S. Resident Hire Personal Services Contractor (PSC)* means a U.S. citizen who, at the time of hiring as a PSC, resides in the Cooperating Country:

(1) As a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or

(2) For reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes a person who at the time of contracting, is a lawfully admitted permanent resident of the United States.

2. Compliance With Laws and Regulations Applicable Abroad (July 1993)

(a) *Conformity to Laws and Regulations of the Cooperating Country.* Contractor agrees that, while in the cooperating country, he/she as well as authorized dependents will abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase or Sale of Personal Property or Automobiles.* To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct.* The contractor shall, during his/her tour of duty under this contract, be considered an ''employee'' (or if his/her tour of duty is for less than 130 days, a ''special Government employee'') for the purposes of, and shall be subject to, the provisions of 18 U.S.C. 202(a) and the USAID General Notice entitled ''Employee Review of the New Standards of Conduct'' pursuant to 5 CFR part 2635. The contractor acknowledges receipt of a copy of these documents by his/her acceptance of this contract.

3. Physical Fitness and Health Room Privileges (Apr 1997)

(a) *Physical Fitness.* (1) For all assignments outside of the United States the contractor and any authorized dependents shall be required to be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a statement of medical opinion that, in the doctor's opinion, the contractor is physically able to engage in the type of activity for which he/she is to be employed under the contract, and the contractor and any dependents are physically able to reside in the Cooperating Country. A copy of the statement(s) shall be provided to the Contracting Officer prior to the contractor's departure for the Cooperating Country, or for a U.S. resident hire, before he/she starts work under the contract.

(2) For assignments of 60 days or more in the Cooperating Country, the Contracting Officer shall provide the contractor and all authorized dependents copies of the ''USAID Contractor Employee Physical Examination Form''. This form is for collection of information; it has been reviewed and approved by OMB, and assigned Control No. 0412–0536. Information required by the Paperwork Reduction Act (burden estimate, points of contract, and OMB approval expiration date) is printed on the form. The contractor and all authorized dependents shall obtain a physical examination from a licensed physician, who will complete the form for each individual. The contractor will deliver the physical examination form(s) to the Embassy health unit in the Cooperating Country. A copy of the doctor's statement of medical opinion at the end of the form which identifies the contractor or dependent by name may be used to meet the requirement in (a)(1) above.

(3) For end-of-tour the contractor and his/her authorized dependents are authorized physical examinations within 60 days after completion of the contractor's tour-of-duty.

(b) *Reimbursement.* (1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this clause, USAID shall reimburse the contractor not to exceed $100 for each physical examination, plus reimbursement of charges for immunizations.

(2) As a contribution to the cost of medical examinations required by paragraph (a)(2) of this clause the contractor shall be reimbursed in an amount not to exceed half of the cost of the examination up to a maximum USAID share of $300 per examination plus reimbursement of charges for immunizations for himself/herself and each authorized dependent 12 years of age or over. The USAID contribution for authorized dependents under 12 years of age shall not exceed half of the cost of the examination up to a maximum share of $120 per individual plus reimbursement of charges for immunizations. The contractor must obtain the prior written approval of the Contracting Officer to receive any USAID obligations higher than these limits.

(c) *Health Room Privileges.* Routine health room services may be available, subject to post policy and in accordance with the requirements of paragraph (a) of this clause, to U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization or predeparture examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, and home visits as medically indicated. Emergency medical treatment is provided to U.S. citizen contractor employees and dependents, whether or not they may have been granted access to routine health room services, on the same basis as it would be to any U.S. citizen in an emergency medical situation in the country.

4. Workweek and Compensation (Pay Comparability Adjustments) (Dec 1985)

(a) *Workweek.* The contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Contract Schedule, and shall coincide with the workweek for those employee of the Mission or the Cooperating Country agency most closely associated with the work of this contract. If the contract is for less than full time (40 hours weekly), the annual and sick leave earned shall be prorated (see the General Provision of this contract entitled Leave and Holidays).

(b) *Compensation (Pay Comparability) Adjustments.* The contractor's compensation shall be adjusted to reflect the pay comparability adjustments which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized are subject to the availability of funds and shall not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the maximum ES–6 annual compensation (or the equivalent daily rate).

5. Leave and Holidays (Apr 1997)

(a) *Vacation Leave.* (1) The contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) above, if the contractor has had previous PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA), he/she shall earn vacation leave at the rate of either 6 hours every two weeks (10 hours for the final pay period of a calendar year) cumulative PSC service exceeding 3 years, or 8 hours every two weeks for cumulative PSC service exceeding 15 years. Former Civil Service, Foreign Service, or a Military Service experience is not creditable towards PSC service for annual leave purposes.

(3) It is understood that vacation leave is provided under this contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the Cooperating Country. The Contractor in consultation with the USAID Mission shall develop a vacation leave schedule early in his/her tour of duty taking into consideration project requirements, employee preference and other factors. All vacation leave earned by the contractor must be used during his/her tour of duty. All vacation leave earned by the contractor but not taken by the end of his/her tour of duty will be forfeited unless the requirements of the activity precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission Director, approves one of the following as an alternative:

(i) Taking leave during the concluding weeks of the employee's tour, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(4) With the approval of the Mission Director, and if the circumstances warrant, a contractor may be granted advance vacation leave in excess in that earned, but in no case shall a contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the contract. The contractor agrees to reimburse USAID for leave used in excess of the amount earned during the contractor's assignment under the contract.

(b) *Sick Leave.* Sick leave is earned at a rate not to exceed 13 work-days per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this contract for the same or similar services *at the same Mission,* but the contractor will not be compensated for unused sick leave at the completion of this contract. No leave my be carried over from one post to another.

(c) *Home Leave.* (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A contractor who is a U.S. citizen or U.S. resident alien and has served as least 2 years overseas, as defined in paragraph (c)(4) below, under personal services contract in this Mission, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 work days for each such year of service overseas; provided, that the contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) above that the contractor must have served 2 years overseas under personal services contract with this Mission to be eligible for home leave, the contractor may be granted advance home leave subject to all of the following conditions:

(i) Granting of leave home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The contractor has served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The contractor agrees to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this or subsequent contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays enroute, to the date of arrival at the U.S. port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or

the possessions of the United States will be added to the required period of service overseas.

(5) Salary during the travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The contractor will be responsible for reimbursing USAID for payments made during home leave, if, in spite of the undertaking of the new appointment, the contractor, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contracting Officer, a contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at USAID/Washington before returning to post duty. Consultation at locations other than USAID/Washington as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(d) *Holidays.* The contractor, while serving abroad, shall be entitled to all holidays granted by the Mission to U.S.-citizen direct-hire employees.

(e) *Military Leave.* Military leave of not more than 15 calendar days in any calendar year may be granted to a contractor who is a reservist of the Armed Forces, provided that military leave has been approved in advance by the Contracting Officer or the Mission Director. A copy of any such approval shall be part of the contract file.

(f) *Leave Without Pay.* Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(g) *Compensatory Time.* Compensatory leave may be granted only with the written approval of the Contracting Officer or Mission Director in rare instances when it has been determined absolutely essential and used under those guidelines which apply to direct-hire employees.

(h) *Leave Records.* The contractor shall maintain current leave records for himself/herself and make them available, as requested by the Mission Director or the Contracting Officer.

6.Differential and Allowances (June 1990)

(a) The following differential and allowances will be granted to the contractor and his/her authorized dependents to the same extent and on the same basis as they are granted to U.S. citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

APPLICABLE REFERENCE TO STANDARDIZED REGULATIONS

(1) Post Differential	Chapter 500 and Tables in Chapter 900.
(2) Living Quarters Allowance	Section 130.
(3) Temporary Lodging Allowance	Section 120.
(4) Post Allowance	Section 220.
(5) Supplemental Post Allowance	Section 230.
(6) Payments During Evacuation	Section 600.
(7) Education Allowance	Section 270.
(8) Separate Maintenance Allowance	Section 260.
(9) Danger Pay Allowance	Section 650.
(10) Education Travel	Section 280.

(1) *Post Differential.* Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to USAID direct-hire employees, post differential not to exceed the percentage of salary as is provided such USAID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, ''Ceiling on Payment'') Tables—Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to the contractor, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment enroute to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to pose differential beginning with the forty-third (43rd) day at post.

(2) *Living Quarters Allowance.* Living quarters allowance is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The contractor will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowance shall not exceed the amount paid USAID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(3) *Temporary Lodging Allowance.* Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his/her family for a period not in excess of (i) three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The contractor will receive temporary lodging allowance for himself/herself and authorized dependents, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(4) *Post Allowance.* Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, D.C. The contractor will receive post

allowance payments not to exceed those paid USAID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(5) *Supplemental Post Allowance.* Supplemental post allowance is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The contractor will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(6) *Payments During Evacuation.* The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the contractor will receive payments during evacuation for himself/herself and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

(7) *Educational Allowance.* Educational allowance is an allowance to assist the contractor in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The contractor will receive educational allowance payments for his/her dependent children in amounts not to exceed those set forth in Standardized Regulations (Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(8) *Separate Maintenance Allowance.* Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The contractor will receive separate maintenance allowance payments not to exceed that made to USAID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(9) *Danger Pay Allowance.* Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The contractor shall be allowed danger pay allowance not to exceed that paid USAID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

(10) *Educational Travel.* Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The contractor will receive educational travel payments for his/her dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for contractors whose assignment is less than two years.

(b) The allowances provided in paragraphs (a) (1) through (10) of this provision shall be paid to the contractor in dollars or in the currency of the Cooperating Country in accordance with practice prevailing at the Mission, or the Mission Director may direct that the contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

7. Social Security, Federal Income Tax, and Foreign Earned Income (June 1990)

(a) Since the contractor is an employee, F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

(b) As an employee, the contractor is not eligible for the ''foreign earned income'' exclusion under the IRS Regulations (see 26 CFR 1.911–3(c)(3)).

8. Advance of Dollar Funds (Apr 1997)

If requested by the contractor and authorized in writing by the Contracting Officer, USAID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to a USAID U.S.-citizen direct-hire employee in accordance with USAID Handbook 22, Chapter 4 or superseding ADS Chapter.

9. Insurance (Apr 1997)

(a) *Worker's Compensation Benefits.* The contractor shall be provided worker's compensation benefits in accordance with the Federal Employees' Compensation Act.

(b) *Health and Life Insurance.* (1) The contractor shall be provided a maximum contribution of up to 50% against the actual costs of the contractor's annual health insurance costs, provided that such costs may not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(2) The contractor shall be provided a contribution of up to 50% against the actual costs of annual life insurance not to exceed $500.00 per year.

(3) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contracts. The Government will normally have already paid its contribution for the retiree unless the employee can prove to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. In such case, the contractor would be eligible for contributions under paragraphs (b) (1) or (2) as appropriate.

(4) Proof of health and life insurance coverage shall be submitted to the Contracting Officer before any contribution is paid. On assignments of less than one year, costs for health and life insurance shall be prorated and paid accordingly.

(5) A contractor who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraphs (b)(1) or (b)(2) of this provision.

(c) *Insurance on Private Automobiles.* If the contractor or his/her dependents transport, or cause to be transported, privately owned automobile(s) to the Cooperating Country, or any of them purchase an automobile within the Cooperating Country, the contractor agrees to ensure that all such automobile(s) during such ownership within the Cooperating Country will be covered by a current, i.e., not in arrears, insurance policy issued by a reliable company providing the following minimum coverage, or such other minimum coverage as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; property damage, $5,000. The contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) operated within the Cooperating Country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

10. Travel and Transportation Expenses (July 1993)

(a) *General.* (1) USAID/Washington Office of Administrative Services, or such other office as may be designated by that office, may furnish Transportation Requests (TR's) to the contractor for transportation authorized by this contract originating in the United States, and the executive or administrative officer at the Mission may furnish TR's for such authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by the Government-issued TR, the contractor shall procure his/her own transportation, the costs of which will be reimbursed in accordance with the terms of this contract.

(2) The contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the

Contracting Officer in accordance with USAID's established policies and procedures for USAID direct-hire employees, and the particular needs of the activity being implemented by this contract. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) *U.S. Travel and Transportation.* The contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Contract Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercially scheduled air travel by the most expeditious route except as otherwise provided in paragraph (g) of this provision unless economy air travel is not available and the contractor certifies to this in his/her voucher or other documents submitted for reimbursement.

(c) *International Travel.* For travel to and from post of assignment, the contractor shall be reimbursed for travel costs and travel allowances from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the contractor's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the contractor's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with USAID's established policies and procedures for its direct-hire employees and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the contractor does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for the contractor and his/her dependents are not reimbursable hereunder. If the contractor serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the contractor's permanent, legal place of residence at the time he or she was employed for work under this contract, or other location as approved by the Contracting Officer, are not reimbursable under this contract for the contractor and his/her dependents. When travel is by economy class accommodations, the contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas)-hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover enroute for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Federal Travel Regulations as from time to time amended.

(d) *Local Travel.* Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the contractor shall be reimbursed for actual travel costs in the Cooperating Country or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(e) *Indirect Travel for Personal Convenience.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) *Limitation on Travel by Dependents.* Travel costs and allowances will be allowed for authorized dependents of the contractor and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and returned, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the contractor, whichever is greater, except as otherwise authorized hereunder for education, medical or emergency visitation travel. If the dependent is eligible for educational travel pursuant to the ''Differential and Allowances'' clause of this contract, time spent away from post resulting from educational travel will be counted as time at post.

(g) *Delays Enroute.* The contractor may be granted reasonable delays enroute while in travel status when such delays are caused by events beyond the control of the contractor and are not due to circuitous routine. It is understood that if delay is caused by physical incapacitation, he/she shall be eligible for such sick leave as provided under the ''Leave and Holidays'' clause of this contract.

(h) *Travel by Privately Owned Automobile (POV).* If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the contractor shall be reimbursed for the cost of travel performed in his/her POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and for each of the authorized dependents traveling in the POV, if the POV is being driven to or from the Cooperating Country as authorized under the contract, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(i) *Emergency and Irregular Travel and Transportation.* Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for USAID-direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for contractor employees and dependents and returning to the post of duty, subject to the prior written approval of the Mission Director that such travel is necessary for one of the following reasons.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty. The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse.

(2) When, for any reason, the Mission Director determines it is necessary to evacuate the contractor or contractor's dependents, the contractor will be reimbursed for travel and transportation expenses and travel allowance while enroute, for the cost of the individuals going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other approved location. The return of such employees and dependents may also be authorized by the Mission Director when, in his/her discretion, he/she determines it is prudent to do so.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in his/her opinion, the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(j) *Home Leave Travel.* To the extend that home leave has been authorized as provided in the ''Leave and Holidays'' clause of this contract, the cost of travel for home leave is reimbursable for travel costs and travel allowances of travelers from the post of duty

in the Cooperating Country to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel to the contractor's residence in the United States) and return to the post of duty in the Cooperating Country. Reimbursement for travel will be in accordance with the Uniform State/USAID/USIA Foreign Service Travel Regulations, as from time to time amended, and will be limited to the cost of travel by the most direct and expeditious route. Travel allowances for travelers shall be in accordance with the rates authorized in the Standardized Regulations as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route using economy class. One stopover enroute for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler or the traveler uses other than economy class. Per diem during such stopover shall be paid in accordance with the Standardized Regulations.

(k) *Rest and Recuperations Travel.* If approved in writing by the Mission Director, the contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as authorized USAID direct-hire Mission employees and their dependents.

(l) *Transportation of Motor Vehicles, Personal Effects and Household Goods.*

(1) Transportation costs will be paid on the same basis as for USAID direct-hire employees serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer) of one privately-owned vehicle for the contractor, personal effects of the contractor and authorized dependents, and household goods of the contractor not to exceed the limitations in effect for such shipments for USAID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer.

(2) The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or crating is not reimbursable. The transportation of a privately owned motor vehicle for a contractor may be authorized as a replacement of the last such motor vehicle shipped under this contract for such contractor when the Mission Director determines, in advance, and so notifies the contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the contractor. The determination shall be made under the same rules and regulations that apply to authorized Mission U.S. citizen direct-hire employees.

(m) *Unaccompanied Baggage.* Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the contractor and dependents, and consideration should be given to advance shipments of unaccompanied baggage. The contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for USAID direct-hire employees in accordance with the Foreign Service Travel Regulations as in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used. This provision is applicable to home leave travel when authorized by the terms of this contract.

(n) *International Ocean Transportation.* (1)(i) *Transportaiton of things.* Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Transportation Division, Office of Procurement, U.S. Agency for International Development, Washington, D.C. 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(ii) *Transportation of persons.* Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Contracting Officer or the Mission Director, as appropriate.

(2) *Transportation of foreign-made vehicles.* Reimbursement of the costs of transporting a foreign-made motor vehicle will be made in accordance with the provisions of the Foreign Service Travel Regulations.

(3) Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of USAID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of USAID. The Contracting Officer will, on request, furnish to the contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(o) *Storage of household effects.* The cost of storage charges (including packing, crating, and drayage costs) in the U.S. of household goods of the contractor will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (l) above provided that the total amount of effects shipped to the Cooperating Country or stored in the U.S. shall not exceed the amount authorized for USAID direct-hire employees under the Uniform Foreign Service Travel Regulations. These amounts are available from the Contracting Officer.

11. Payment (Aug 1996)

(a) Once each month, or at more frequent intervals, if approved by the paying office indicated on the Cover Page, the contractor may submit to such office form SF 1034 ''Public Voucher for Purchases and Services Other Than Personal'' (original) and SF 1034–A (three copies), or whatever other form is locally required or accepted. Each voucher shall be identified by the USAID contract number and properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The contractor's detailed invoice, in original and two copies, indicating for each amount claimed the paragraph of the contract under which payment is to be made, supported when applicable as follows:

(i) For compensation—a statement showing period covered, days worked, and days when contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) For travel and transportation—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) For reimbursable expenses—an itemized statement supported by original receipts.

(2) The first voucher submitted shall account for, and liquidate the unexpended balance of any funds advanced to the contractor.

(b) A final voucher shall be submitted by the contractor promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion. The contractor's claim, which includes his/her final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this contract has been approved by USAID. On receipt and approval of the voucher designated by the contractor as the ''final voucher'' submitted on Form SF 1034 (original) and SF 1034–A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the contractor, the Government shall pay any amounts due and owing the contractor.

(c) If approved by the paying office time and attendance may be submitted for PSCs in the same manner as is approved for direct-hire personnel.

12. Conversion of U.S. Dollars to Local Currency (Dec 1985)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the

contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the contractor shall follow in the conversion of U.S. dollars to local currency. This may include, but not be limited to the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

13. Post of Assignment Privileges (July 1993)

Privileges such as the use of APO, PX's, commissaries and officers clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, USAID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans. However, in those cases where facilities are open to non-official Americans, they may be used.

14. Security Requirements (June 1990)

(a) This entire provision shall apply to the extent that this contract involves access to classified information (''Confidential'', ''Secret'', or ''Top Secret'') or access to administratively controlled information (''Limited Official Use''). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by the USAID Office of Security (IG/SEC), as referenced in paragraph (d) of this provision and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Foreign Affairs Manual, Chapter 5 (5 FAM 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(d) The contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(e) The Government agrees that, when necessary, it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the contractor to the Government or by the Government to the contractor, and the Government shall give written notice of such security classification or administratively controlled designation to the contractor and of any subsequent changes thereof. The contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(f) The contractor agrees to certify after completion of his/her assignment under this contract that he/she has surrendered or disposed of all classified and/or administratively controlled information in his/her custody in accordance with applicable security instructions.

15. Contractor-Mission Relationships (Dec 1985)

(a) The contractor acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the Cooperating Country, the contractor is expected to show respect for the conventions, customs, and institutions of the Cooperating Country and not interfere in its political affairs.

(c) If the contractor's conduct is not in accordance with paragraph (b) of this provision, the contract may be terminated under General Provision 16 of this contract. The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of USAID in the Cooperating Country. In this capacity, he/she is responsible for the total USAID Program in the Cooperating Country including certain administrative responsibilities set forth in this contract and for advising USAID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the contract. However, he/she shall be under the general policy guidance of the Mission Director, and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this contract.

16. Termination (Nov 1989)

(This is an approved deviation to be used in place of the clause specified in FAR 52.249–12.)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the contractor in the event (i) the Contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the contractor is guilty (as determined by USAID) of misconduct in the Cooperating Country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by USAID, the contractor shall promptly refund to USAID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of USAID, by giving not less than 15 calendar days advance written notice to the contractor. Upon such a termination, contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to any unused vacation leave, return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rate specified in the contract and subject to the limitations which apply to authorized travel status.

(3) For the convenience of USAID, when the contractor is unable to complete performance of his/her services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract shall be deemed terminated upon delivery to the Contractor of a termination notice. Upon such a termination, the contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations which apply to authorized travel status.

(b) The contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

17. Release of Information (Dec 1985)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this contract by the Contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than USAID, except as otherwise expressly provided in this contract.

18. Notices (Dec 1985)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To USAID: Administrator, U.S. Agency for International Development, Washington, D.C. 20523–0001, Attention: Contracting Officer.

(name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor:

At his/her post of duty while in the Cooperating Country and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

19. Reports (June 1987)

(a) The Contractor shall prepare and submit 2 copies of each technical report required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to:

PPC/CDIE/DI, Acquisitions, Room 209, SA–18, U.S. Agency for International Development, Washington, D.C. 20523–1802.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the USAID project office, and the publication or insurance date of the report.

(b) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

20. Use of Pouch Facilities (July 1993)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for USAID contractors and their employees as a general policy, as detailed in paragraphs (a)(1) through (a)(6) of this provision. However, the final decision regarding use of pouch facilities rests with the Embassy or USAID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and USAID for loss or damage occurring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to a maximum of 0.90 kilogram/2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen contractors are authorized use of the pouch for personal mail up to a maximum of 0.45 kilogram/one pound per shipment (but see (a)(3) below). Non-U.S. citizen Contractors are not permitted use of the pouch for personal mail except to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purpose of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail under paragraphs (a) (1) and (2) of this provision, sent by pouch, should be addressed as follows:

Individual's Name (C), U.S. Agency for International Development, Washington, D.C. 20523–0001.

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) Use of military postal facilities (APO/FPO) is authorized to U.S. contractors on the same basis as approved for direct-hire employees at the USAID Mission. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than USAID/W) through U.S. postal channels is required.

(b) The contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or USAID Mission.

21. Biographical Data (June 1990)

(a) The contractor agrees to furnish biographical information to the Contracting Officer on forms (SF 171 and 171As) provided for that purpose.

(b) Emergency locator information. The contractor agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding himself/herself and dependents:

(1) Contractor's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the contractor or the contractor's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

22. U.S. Resident Hire Personal Services Contractor (June 1990)

A contractor meeting the definition of a U.S. Resident Hire PSC contained in Section 12, General Provisions, Clause 1, Definitions, shall be subject to U.S. Federal Income Tax, but shall not be eligible for any fringe benefits (except contributions for FICA, health insurance and life insurance), allowances, or differentials, including but not limited to travel and transportation, medical, orientation, home leave, etc., unless such individual can demonstrate to the satisfaction of the Contracting Officer that he/she has received similar benefits/allowances from their immediately previous employer in the Cooperating Country, or the Mission Director determines that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interest of the U.S. Government.

23. Orientation and Language Training (July 1993)

(a) Except as set forth in paragraph (b)(4) below, the Contractor shall receive a maximum of 2 weeks USAID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by USAID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modified orientation,

(2) Language training,

(3) Orientation for Contractor's dependents at contract expense.

(4) Waiver of orientation for individual contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled ''Travel and Transportation Expenses,'' if the orientation is more than 80 kilometers/50 miles from the contractor's residence.

Allowable salary costs during the period of orientation are also reimbursable.

24. Conditions for Contracting Prior to Receipt of Security Clearance (July 1993)

(a) U.S. Resident Hire PSC. The contractor may commence work prior to the completion of the security clearance. However, until such time as clearance is received, the contractor shall have no access to classified or administratively controlled materials. Further, failure to obtain clearance will constitute cause for contract termination in accordance with paragraph (a)(2) of General Provision 16 of this contract.

(b) U.S. PSC—Non-Resident Hire. The contractor may elect to commence travel to post immediately to begin work prior to completion of the security clearance. However, until such time as security clearance is received, the contractor shall:

(1) Have no access to classified or administratively controlled materials;

(2) Be authorized to travel to post himself/herself only; and

(3) Be authorized no entitlements other than those normally authorized for short term (less than a year) employees at post. Even if the contract is for one year or more, dependents may not accompany contractor unless at his/her expense, and transportation/storage of household/personal effects and motor vehicle will not be financed by USAID prior to the receipt of the security clearance. Upon receipt of clearance, the Contracting Officer will authorize reimbursement of any such costs borne at contractor's expense prior to clearance provided they are reasonable, allocable and allowable. If appropriate given the length of time remaining, the Contracting Officer will authorize dependent travel and shipment/storage of motor vehicle and effects. Allowances which would not be provided to short term employees will be authorized after clearance is received provided that the contractor is otherwise entitled to such benefits. Failure to obtain the security

clearance will constitute cause for contract termination in accordance with paragraph (a)(2) of General Provision 16 of this contract.

25. Medical Evacuation (MEDEVAC) Services (July 1993)

(a) The contractor agrees to obtain medevac service coverage for himself/herself and his/her authorized dependents while performing personal services abroad. Coverage shall be obtained pursuant to the terms of the contract between USAID and USAID's medevac service provider unless exempted in accordance with paragraph (b).

(b) The following are exempted from the requirements in paragraph (a):

(1) Contractors and their dependents with a health insurance program that includes sufficient medevac coverage as approved by the Contracting Officer.

(2) Contractors and their dependents located at Missions where the Mission Director makes a written determination to waive the requirement for such coverage based on findings that the quality of local medical services or other circumstances obviate the need for such coverage.

(c) Information on the current medevac service provider, including application procedures, is available from the Contracting Officer.

26. Governing Law (Nov 1996)

This contract is established under the procurement authorities of the United States Government and shall be interpreted in accordance with the body of Federal Procurement Law in the United States. This contract is a complete statement of the duties, compensation, benefits, leave, notice, termination, and the like; therefore, the laws of the country of performance with respect to labor and contract matters shall not apply to either the carrying out of the obligations of the parties or to the interpretation of this agreement.

13. FAR Clauses to be Incorporated in Full Text in Personal Services Contracts.

The following FAR Clauses are always to be used along with the General Provisions. They are required in full text.

1. Covenant Against Contingent Fees 52.203–5
2. Electronic Funds Transfer Payment Methods 52.232–28
3. Disputes 52.233–1 (Alternate 1)
4. Preference for U.S. Flag Air Carriers 52.247–63

14. FAR Clauses to be Incorporated by Reference in Personal Services Contracts

The following FAR Clauses are to be used along with the General Provisions, and when appropriate, be incorporated in each personal services contract by reference:

1. Anti-Kickback Procedures 52.203–7
2. Limitation on Payments to Influence Certain Federal Transactions 52.203–12
3. Audit and Records—Negotiation 52.215–2
4. Privacy Act Notification 52.224–1
5. Privacy Act 52.224–2
6. Taxes—Foreign Cost Reimbursement Contracts 52.229–8
7. Interest 52.232–17
8. Limitation of Cost 52.232–20
9. Limitation of Funds 52.232–22
10. Assignment of Claims 52.232–23
11. Protection of Government Buildings, Equipment, and Vegetation 52.237–2
12. Notice of Intent to Disallow Costs 52.242–1
13. Inspection 52.246–5
14. Limitation of Liability—Services 52.246–25

Dated: May 21, 1997.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 97–18601 Filed 7–22–97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 141
Wednesday, July 23, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Partial Recommended Decision on Proposed Amendments to Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This partial recommended decision denies proposed amendments to 4 Federal milk orders in the Southeastern United States involving deductions from the minimum uniform price to producers and the definition of ''producer'' specified in the orders. The decision is based upon public hearings held May 15–16, 1996, in Charlotte, North Carolina, and December 17–18, 1996, in Atlanta, Georgia.

DATES: Comments are due not later than August 22, 1997.

ADDRESSES: Comments (4 copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (Tel: 202/690–1932; E-mail:NMEMOLI@USDA.gov).

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This recommended decision denies the proposed amendments to the order. In any event, the proposals were not intended to have a retroactive effect. Furthermore, even if adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a small business if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purpose of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

The milk of approximately 8,600 producers is pooled on the Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville milk orders. Of these producers, 95 percent produce below the 326,000-pound production guideline and are considered to be small businesses.

There are 43 handlers operating pool plants under the four orders. Of these handlers, 22 have fewer than 500 employees and qualify as small businesses.

Additionally, under the Regulatory Flexibility Act the agency examines the impact of a proposed rule on small entities. The Agricultural Marketing Service has determined that neither the denial, nor the adoption, of this proposed rule involving deductions from the minimum payments to producers will have a significant economic impact on a substantial number of small entities under current marketing conditions. Dairy farmers are presently receiving the minimum order prices and should continue to do so given the current level of over-order premiums now in effect. Similarly, neither adoption nor denial of the proposed amendments will have any effect on handlers' costs under the orders because handlers are voluntarily paying producer prices in excess of the minimum prices specified in the orders. Furthermore, for the long term, the issue of deductions from minimum payments will be considered as part of the Federal order reform in connection with the Federal Agriculture Improvement and Reform Act of 1996 which requires an examination of the Federal milk order system. The concerns of small businesses will be addressed throughout the review process.

Additionally, neither the denial, nor the adoption, of the proposal to modify the definition of ''producer'' under the 4 orders will have a significant economic impact on a substantial number of small entities. Producer

pooling standards already exist in the 4 orders to assure an adequate association by producers in meeting the fluid milk needs of the markets. Also, the denial of such proposal maintains the existing regulatory burden, and will not place any additional responsibilities on handlers operating under the orders.

Prior documents in this proceeding:

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Final Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Orders: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Extension of Time for Filing Comments to the Tentative Decision: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Extension of Time for Filing Comments to the Tentative Decision: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

Notice of Reopened Hearing: Issued November 19, 1996; published November 25, 1996 (61 FR 59843).

Partial Final Decision: Issued May 12, 1997; published May 20, 1997 (62 FR 27525).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), in Charlotte, North Carolina, on May 15–16, 1996, and in Atlanta, Georgia, on December 17–18, 1996. Notice of the initial hearing was issued on May 1, 1996, and published May 3, 1996 (61 FR 19861).

An interim order amending the orders with regard to transportation credits was issued on August 2, 1996, and published August 9, 1996 (61 FR 41488). The interim amendments became effective on August 10, 1996.

The Department reopened the hearing to hear additional evidence regarding the transportation credit issue and also to hear a related ''producer'' definition proposal. This hearing was held on December 17–18, 1996, in Atlanta, Georgia, following the notice of such reopened hearing issued on November 19, 1996, and published on November 25, 1996 (61 FR 59843).

Interested parties were given until June 17, 1996, to file post-hearing briefs regarding the deductions from the minimum price proposal as published in the **Federal Register** and as modified at the hearing. Regarding the additional proposal concerning the definition of a ''producer'' heard at the reopened hearing, interested parties were given until February 7, 1997, to file post-hearing briefs.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The material issues on the record of the hearing relate to:

1. Transportation credits for supplemental bulk milk received for Class I use.
2. Deductions from the minimum uniform price to producers.
3. Whether emergency marketing conditions in the 4 regulated marketing areas warrant the omission of a recommended decision with respect to Issue No. 1 and the opportunity to file written exceptions thereto.
4. The definition of producer.

This partial recommended decision deals only with Issues 2 and 4. Issue 1 was discussed in the tentative partial final decision issued July 12, 1996 (61 FR 37628) and has been considered separately in a partial final decision. Issue 3 was discussed in the tentative partial final decision also, and is now moot.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue #2—Deductions From the Minimum Uniform Price to Producers

A proposal by Hunter Farms and Milkco, Inc., seeks to clarify the minimum payment to producers for Federal Milk Orders 1005, 1007, 1011, and 1046. Under the proposal, a handler (except a cooperative acting in its capacity as a handler pursuant to paragraph 9(b) or 9(c)) may not reduce its obligations to producers or cooperatives by permitting producers or cooperatives to provide services which are the responsibility of the handler. According to the proposal, such services include: (1) preparation of producer payroll; (2) conduct of screening tests of tanker loads of milk required by duly constituted regulatory authorities before milk may be transferred to the plant's holding tanks and any other tanker load tests required to establish the quantity and quality of milk received; and (3) any services for processing or marketing of raw milk or marketing of packaged milk by the handler. The proposal should be denied on the basis of this record.

The Vice President of Hunter Farms, which operates plants regulated under Order 5 at High Point and Charlotte, North Carolina, testified that Hunter purchases milk from Piedmont Milk Sales, Carolina-Virginia Milk Producers Association (CVMPA), Mid-America Dairymen, Inc. (Mid-Am), and Cooperative Milk Producers Association. The witness explained that CVMPA and Mid-Am are cooperative associations, while Piedmont Milk Sales is a marketing agent handling the milk of non-member producers.

The witness testified that beginning in late 1994 and through the early fall of 1995, marketing conditions in the Southeast were so competitive among supply organizations that handlers were able to purchase raw milk from producers and cooperatives at Federal minimum order prices without any over-order premiums being charged. With the elimination of over-order premiums, he said, questions arose as to who must pay for services associated with the receipt of milk at regulated plants. He explained that when there were sufficient over-order premiums, it was assumed that the premiums included payment for the services associated with the receipt of milk at the plant. However, from December 1994 until September 1995, he said that competing handlers who received milk from cooperative associations at the minimum order price did not fully compensate the cooperatives for the services that were provided.

The witness stated that when Hunter began purchasing milk from Piedmont at the minimum Federal order price, the market administrator of Order 5 took the position that they must also pay for the services that were provided by the dairy farmers marketing their milk through Piedmont and, therefore, issued underpayment notices to Hunter for milk received from Piedmont for the December 1994 through September 1995 period. He said the market administrator refused to examine the issue of whether cooperative associations which provided similar services for competing handlers also should be compensated for those services.

The witness pointed out that over-order premiums have now returned to Order 5, so the question of what constitutes a minimum payment to producers has become less urgent. He

emphasized, however, that the problem is capable of repetition since premiums in this area could be reduced or disappear entirely. Therefore, he said, it is important to resolve this issue before it arises again.

The witness testified that without a change in the order, when prices paid are at Federal order minimums, handlers purchasing milk from non-member producers will be at a competitive disadvantage for the purchase of raw milk vis-a-vis their competitors who purchase from cooperatives. This will occur, he said, because the market administrator takes the position that cooperatives can provide free services for their customers but non-member producers serving competing handlers cannot provide the same services without charging over-order prices.

Noting that the sale of packaged milk is extremely competitive, the Hunter representative testified that requiring one handler to pay more than another simply because the handler purchases milk from non-member producers results in immediate irreparable harm to the handler paying more for its milk because the handler will lose milk sales. He said that the current policy results in non-uniform prices paid by handlers in violation of the Agricultural Marketing Agreement Act. Not only is this result discriminatory and unfair, he said, it also leads to lower prices for all producers, members as well as non-members, because cooperatives tend to provide more, not fewer, services in competing for sales with non-members. Therefore, he concluded, cooperatives also would benefit from a clarification of the rules defining Federal minimum order prices.

All of the orders involved in this proceeding should be amended to resolve this issue according to the Hunter Vice-President because Hunter and Milkco compete for raw milk procurement and sales of packaged products with handlers from each of the 4 orders. Moreover, he said, premiums returned to all 4 orders at the same time, which indicates that the cooperatives treat handlers in these 4 orders identically.

A second witness representing Hunter Farms and Milkco, Inc., explained the proposal of these handlers in more detail. This witness, a consultant with a long history in Federal milk order regulation, explained that the proposal describes 3 categories of services.

The first service described by the witness is the preparation of a producer payroll report. He said that the orders are fairly uniform as to the requirement for such reports, which show each producer's name and address, the total pounds of milk received from the producer, the average butterfat content of the milk, the price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

A second service described by the witness is the testing of incoming tanker loads of milk, as required by health regulations, to assure the milk meets minimum quality standards. The witness reasoned that if there is a legal requirement for this test to be performed, the cost of the test should be borne by the plant operator. He added that the order requires the plant operator to test and weigh the milk to establish the pounds of milk received and the butterfat content of the milk. The witness noted that in other parts of the country, these tests are handled differently. In the Indiana, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Chicago Regional marketing areas, which provide for component pricing of milk, the market administrator has assumed the function of testing milk for butterfat and other components, and has increased the marketing service charges to non-member producers from 5 to 7 cents to cover these services. He concluded that the market administrators in those areas obviously consider these tests to be a producer responsibility.

The witness stated that there is a somewhat similar situation in Orders 5, 7, 11, and 46 because tests conducted by the market administrators are used to establish the amount of butterfat in milk receipts, which is a basis for payment to the producer. He said that the Department should address this inconsistency by determining whether these tests are the plant operator's responsibility or a producer's responsibility.

The third service described by the witness includes any costs associated with processing raw milk or marketing milk in bulk or packaged form. The addition of this specific order language, he said, would support the historical position of the Department that the handler is responsible for the costs associated with the processing and/or marketing of all milk received.

The witness stressed that the thrust of this proposal is to ensure equality in the cost of milk among regulated handlers. He said that current administrative practice in this area requires handlers receiving milk from non-member producers to absorb the cost of a variety of services which are provided at no extra charge to handlers receiving milk from cooperative associations. Thus, he concluded, these orders are not impacting uniformly on handlers who buy milk from cooperatives versus those handlers who buy from non-members, nor are they being uniformly applied to producers who are members of a cooperative versus those who are not members of a cooperative. By clearly defining what services are the responsibility of plant operators, regardless of the source of the milk received, this lack of uniformity can be corrected, he said.

The General Manager of Carolina-Virginia Milk Producers Association or CVMPA offered qualified support for the Hunter-Milkco proposal. He said that from a philosophical point of view CVMPA would agree that if producers provide the services specified by the proponents—plus any additional services that are provided to a handler by a cooperative association—handlers should be charged the costs associated with these services. He said that, with these modifications, CVMPA could support the proposal.

The witness stated that, to assure that cooperative members are not allowed to pay the cost of services given to handlers, the list of services in the Milkco-Hunter proposal should be expanded to cover tanker washing and tagging, supplying milk to handlers on an irregular delivery schedule, field work, disposing of surplus milk during months when the supply is above local needs, and importing supplemental milk for Class I use during periods of short production.

While expressing the hope that market conditions do not return to the zero over-order prices that existed in 1994 and 1995, the CVMPA General Manager stated that the proposal, as modified by CVMPA's suggestions, could help decrease the likelihood that cooperative members would have to bear the costs resulting from these circumstances. He said CVMPA appreciated Milkco and Hunter Farm's attempt to address these circumstances.

A spokesman for Milkco Inc. testified that Milkco, a fluid milk processing plant located in Asheville, North Carolina regulated under Order 5, receives milk from cooperative associations as well as independent producers marketing their milk through Piedmont Milk Sales. The witness testified in support of Hunter's position as it pertains to proposal number 2 and stated that Milkco received underpayment notices from the market administrator for the December 1994 through October 1995 period on milk received from independent dairy farmers, but did not receive underpayment notices on milk received

under the same or similar conditions from cooperative associations.

Testimony was also offered by a representative of Mid-America Dairymen, Inc. (Mid-Am) involving proposal number two. Mid-Am testified that it was not appropriate for proposal two to be heard under the same procedure as a hearing called to consider a proposal on marketwide service payments. Mid-Am also objected to the narrowness of Hunter-Milkco's proposal. Mid-Am argued that the issue of minimum payments to producers is national in scope, and should not be limited to the 4 Southeastern orders. This issue, Mid-Am suggests, should be addressed by the Secretary within the context of the Federal order reform as required by the 1996 Farm Bill on a national basis. In addition, the Mid-Am representative objected to such proposal on grounds of lack of notice to interested parties.

The administrative law judge presiding over the hearing overruled Mid-Am's objection to hearing proposal number 2, noting that the Secretary had given interested parties the minimum 3-day notice requirement specified in 7 CFR 900.4(a). He also indicated that this proposal, unlike proposal number 1, was being considered on a non-emergency basis and that, accordingly, interested parties had more than adequate time to brief it, discuss it, and consider it.

Briefs

Briefs were submitted by interested parties both in support of and in opposition to this proposal. Proponents, Hunter Farms and Milkco, Inc., submitted a brief in support of their proposal, emphasizing the points made on the hearing record.

Hunter and Milkco maintain that uniform applicability in the treatment of handlers is essential, and any lack of uniformity is in violation of the Agricultural Marketing Agreement Act, as amended. Referring to an earlier proceeding, *In re: Kraftco Corp.*, which dealt with uniform applicability, proponents state that ''* * * all handlers must be treated identically with respect to receipt of services on their entire milk supply in the relevant marketing area.'' It is argued that issuance of underpayment notices only on that milk which was received from independent producers who contracted with a specific marketing agency does not promote uniformity and is discriminatory.

Proponents addressed the issue of uniformity, not only among handlers, but also among producers. Hunter and Milkco state that independent producers may be subject to discriminatory treatment and lose their market as handlers find it cheaper to purchase milk from cooperatives that absorb costs which nonmembers cannot. In addition, it is argued that cooperative associations which provide services free of charge either believe ''* * * they were providing these services as additional services over and above that required by the Federal order, or they knowingly provided services to handlers which were the responsibility of handlers for free * * *''. The decision to perform such services at no charge must be taken into consideration when determining whose responsibility they are.

Hunter and Milkco's brief also addresses the objections made by Mid-Am to this proposal. The handlers maintain that Mid-Am's objection to their proposal based on grounds of lack of notice is unfounded because the notice given was adequate. In addition, Hunter and Milkco argue that the suggestion by Mid-Am that this proposal be considered on a national basis is unjustified. Proponents maintain that the problem which has prompted this proposal is specific to the Federal order under consideration, and no evidence was presented to show that this problem exists in other regions of the United States.

Fleming Companies, Inc., also filed a brief in support of this proposal. Fleming states that ''* * * To the extent such services primarily benefit producers, it is appropriate that producers be authorized to contract for such services, and to allow a deduction for the reasonable value of such services.''

In addition, Fleming writes that as a buyer of milk from both independent producers as well as cooperative associations, it is concerned that without the clarification offered by the proposal, equity among member producers and non-member producers may be jeopardized. Fleming argues that price uniformity may not be maintained if cooperative associations are able to assume the cost of producer-oriented services, but handlers receiving independent milk are not permitted to make a deduction for these services even if authorized by the producer.

A brief filed by Mid-America Dairymen, Inc., emphasized the cooperative's strong opposition to the proposal. Mid-Am argues that the alleged underpayment problems, which the proponents believe will be resolved by such proposal, are not isolated to the Carolina Federal milk marketing order, and that such a problem could occur under any of the other Federal milk marketing orders in a situation when no over-order charges exist. For this reason, Mid-Am believes that this issue should be considered on a national basis. Mid-Am also believes that with the resumption of over-order pricing within the Carolina order, there is no urgent need to adopt the proposed amendments.

In addressing which services are the responsibility of handlers as opposed to those of producers, Mid-Am states that it is clear that the costs for butterfat testing are borne by all producers, and the costs of testing milk in tankers for antibiotics are borne by all handlers regardless of their source of supply. Mid-Am argues that no confusion exists as to who is responsible for these tests and, therefore, they should not be included in the proposed amendments.

Mid-Am concludes its brief by reiterating its request that this issue be remanded to the Secretary for further consideration on a national basis. It suggests that this issue be evaluated under the current review of the Federal Milk Marketing Order system as required by the 1996 Farm Bill.

The Kroger Co. states in its brief that proposal 2 is worthy of study and should be considered by the Secretary in the context of all Federal milk marketing orders. According to Kroger, any decision made on this issue should pertain to all Federal milk marketing orders. Like Mid-Am, Kroger suggests addressing this proposal within the context of the review of the Federal Milk Order Program as mandated by the 1996 Farm Bill.

Conclusion

Federal orders enforce the payment of minimum prices for milk to producers by handlers. Under orders, payment for milk received from producers may not be less than the uniform price as announced each month by the market administrator, except to producers who receive payment from their cooperative association. A cooperative association under the authorizing legislation may blend the net proceeds of its sales of milk for payment to its member producers. The enforcement of minimum prices for milk ensures that each producer receives a uniform proportion of the returns from higher valued fluid (Class I) milk sales as well as the lower returns from milk used in lower class uses.

Payments to a producer by a handler, however, can be reduced to reflect ''proper deductions authorized in writing by such producer.'' Historically, such deductions from minimum milk prices of only two basic types have been permitted. The two types of deductions permitted are (1) payments that are

made by a handler on behalf of the producer to creditors of the producer, and (2) payments that are obligations of the producer in the production of milk and the transportation costs for delivery to the handler's plant. Such creditors for goods and services have included banks, other lenders, feed companies, veterinarians, machinery dealers, etc. Examples of payments associated with the production of milk and the delivery to the handler's plant would include feed, supplies, equipment and hauling. Handlers are not required to make payments to creditors on behalf of producers but are permitted to do so if the deductions are proper and authorized. Such permission recognizes that handlers frequently make payments to producer's creditors as a service to the producers. The term ''proper'' is included to prevent unwarranted deductions from minimum prices for milk.

The authorization by a producer of a certain deduction may not be proper and thus disallowed by the market administrator. Producers cannot give up their rights to receive the uniform price by a deduction that is not of the two types described above.

Additionally, under the 4 orders handlers are required to deduct 5 to 7 cents per hundredweight from payment to independent producers for marketwide services which is paid to the market administrator. This marketwide service fee is used to provide market information and to check the accuracy of the testing and weighing of milk for producers who are not receiving such services from a cooperative association.

The record of this hearing clearly points to a conceptual difference among market participants concerning what constitutes minimum prices to producers. To a large extent, this difference results from changing market conditions, new technologies, and order amendments reflecting these changes. The end result is that interpretations under various orders differ concerning the responsibilities of plant operators and the responsibilities of producers or their cooperative associations.

Proponents would have the Secretary resolve this issue by delineating those services that are the responsibility of plant operators and those services that belong in the domain of producers. Furthermore, proponents apparently would have the Secretary determine a rate for each service so that if a producer or cooperative association provided the service for a plant operator, that plant operator could simply compensate the producer/cooperative according to the rate set forth in the order.

One of the obvious problems in dealing with a proposal of this nature is to determine which services are, in fact, the responsibility of the handler and which are the responsibility of the cooperative association supplying milk to that handler. The record shows that the proponent handlers—Milkco and Hunter— clearly have a different conception of their responsibility than does CVMPA, which agrees with them in principle but differs with them in specifics. While the proponents consider handler responsibilities to be payroll costs, screening of incoming milk, and all costs associated with marketing milk once it enters the plant, CVMPA maintains that those responsibilities should include tanker washing and tagging, ordering milk on an irregular delivery schedule, field work that is provided by the cooperative association, disposing of surplus milk during months when the supply is above local needs, and importing supplemental milk for Class I use during periods of short production.

It is apparent that there is a significant difference of opinion concerning the services for which handlers should be responsible. Although evidence was not presented concerning the rates that should be associated with each of these services, there is no doubt that there would be clear differences of opinion in that area as well.

It would be particularly difficult to establish uniform rates for the services suggested by CVMPA. For example, there was no indication of the cost of providing milk to a handler 4 times per week as opposed to 3 times per week. Similarly, there was no testimony or data concerning the cost of handling a market's surplus milk.

The single issue prompting the Milkco-Hunter proposal was the alleged inequity between handlers buying cooperative association milk at minimum order prices—but with services provided by the cooperative—and handlers buying milk from non-members at minimum order prices but without the services that their competitors received with their cooperative-supplied milk.

At the hearing, proponent's expert witness said that producers should have the right to market their milk through a marketing agent if they so choose. Setting aside the question of the legality of marketing agents under the Sherman Antitrust Act, if a producer contracts with an agent to market his/her milk, some means must be devised to pay that agent for the services provided. This raises the question of whether deductions to the marketing agent authorized in writing by the producer are ''proper'' deductions under the order.

Assuming there is no legal obstacle to the use of a marketing agent, the marketing agent presumably would be the party responsible for selling the producer's milk to a handler and might collect the payment from the handler on behalf of the producer, if the producer has provided this authorization to the marketing agent. In such a case, another question that must be clarified is whether a handler's payment of the minimum order price to a producer's marketing agent should be deemed to be a payment of the minimum order price to the producer, just as it is in the case of a cooperative association.

At the hearing, proponent's expert witness was questioned about the desirability of simply treating all deductions authorized in writing by a producer as ''proper'' deductions. The witness indicated that there have been cases in the past where producers have been coerced—for fear of losing their market—into authorizing deductions that were not proper deductions, as determined by the market administrator. To the extent that this exists, the witness said, the Secretary would not be enforcing minimum uniform prices to handlers.

Provisions dealing with the minimum payment that handlers are required to pay producers are at the core of each milk order. They should be based upon the same policy considerations and should not differ from one order to another. Therefore, we concur with the suggestions made by The Kroger Company and Mid-America Dairymen, Inc., to consider this important issue as part of the Federal order reform.

The record of this hearing demonstrates a clear disagreement among market participants concerning the division of services between producers and handlers. In view of this disagreement, the importance of this issue to the program, the current review of all Federal order provisions in connection with the 1996 Farm Bill, and the lack of a present problem in these four orders, the proposal of Hunter/Milkco should be denied. However, the terms of the proposal, the briefs dealing with the proposal, the relevant transcript and exhibits from the hearing, and this recommended decision should be considered in conjunction with the reform of Federal milk orders mandated by the Federal Agriculture Improvement and Reform Act of 1996.

The 1996 Act requires the Secretary of Agriculture to merge the existing 33 Federal milk orders (currently 32 orders) into no more than 14, and no less than 10, milk orders by April 1,

1999. As part of this process, the Department is undertaking a complete review of all of the provisions in Federal milk orders in an effort to determine which provisions would best meet the needs of the consolidated orders in the next century. This review provides an ideal opportunity to study this important issue. It will incorporate the views and experiences of many different market administrator offices and it will solicit the views of interested parties to comment on the provisions that are recommended for the newly consolidated orders.

As pointed out by Hunter and Milkco in their brief, the underpayment problem which they experienced has been rendered moot with the return of over-order premiums. Although these premiums could again disappear, bringing the uniform pricing issue to the fore once again, this is not likely to happen in the near future. Nevertheless, if this should happen, proponents could request relief through other means pending final resolution of this matter.

Material Issue #4—Definition of Producer

A proposal to modify the definition of producer for Federal Milk Orders 1005, 1007, 1011, and 1046 should also be denied on the basis of the testimony and evidence received at the reopened hearing.

The spokesman for Mid-America Dairymen, Inc. (Mid-Am), Carolina-Virginia Milk Producers Association (CVMPA), and Maryland-Virginia Milk Producers Association, proponents of the proposal to modify the current producer definition, testified that the elimination of the base-excess plans for each of the orders will allow for the pooling of milk not historically associated with these markets. Mid-AM's proposal to further define producer qualification, he stated, aims at minimizing this exposure, which would be detrimental to Southeastern dairy farmers.

The spokesman offered testimony explaining that base-excess plans (included in each of the 4 orders at the time of the reopened hearing, but terminated from each order effective January 1, 1997, as a result of the expiration of legislative authority to include such plans in Federal milk orders) have substantially removed the incentive for a dairy farmer who was associated with another market during the base-building months to become a producer under one of these 4 orders during the base-paying months. He expressed concern that with the elimination of such plans, no provisions would exist to prevent a dairy farmer from pooling any milk diverted or delivered within limits to pool plants under the orders during the former base-paying months.

After explaining the current provisions regarding the definition of producer, the spokesman testified that Mid-Am's proposal is almost identical to Order 46's current provision applicable to producers supplying a country plant, which excludes a person with respect to any milk produced by him or her that is received or diverted from a country plant in any month of March through August, unless at least 60 days' production from such farm was producer milk during the preceding September through February period.

The witness stated that the proposed provisions for the 4 orders will exclude from the producer definition, during the flush production months of February through May, any dairy farmer who delivered more than 40 percent of his or her milk to plants as other than ''producer milk'' during the months of August through November. The proposed provisions, according to the witness, are designed to restrict those producers not normally associated with such orders from pooling their milk during the flush production months when it is not needed to supply fluid needs if they have not pooled such milk during the prior short months when supplies were needed.

In addition, the spokesman stated that for the purpose of determining the percentage of a producer's milk that was pooled during the prior August through November period, deliveries to plants as producer milk under the 4 orders should be considered deliveries under the applicable order. He testified that this proviso is necessary to accommodate: (1) the historical shifting of producers between the 4 orders; (2) the shifting of pool distributing plants; and (3) the shifting of producer milk due to the opening and closing of pool plants in the 4-order area.

The witness also testified that the proposal, as found in the notice of hearing, should be modified to include a new subparagraph in Section 44 of the orders which is necessary to define the classification of the milk received. Also, the witness added that there is a revision to Section 60 involving the pricing of the milk as classified in Section 44. This addition to order language, according to the spokesman, would require the receiving handler to pay into the pool the difference between the Class I price and the Class III price.

When asked about administrative costs associated with the relevant proposal, the witness contended that there should be no noticeable difference between costs associated with the producer qualification proposal and costs associated with the base-excess plan. In conclusion, Mid-Am's spokesman testified that the adoption of such proposal is necessary to foster orderly marketing in the area and protect producer pools of the 4 southeastern orders.

A representative of CVMPA testified that CVMPA fully supports the producer qualification proposal to make sure that high Class I utilization markets in the Southeast do not carry surplus from other surrounding markets resulting in low Class I utilization rates during the flush months of production. He maintained that the proposal benefits producers, processors, and consumers by maintaining fluid supplies, while encouraging the survival of local producers.

A representative from Associated Milk Producers, Inc. (AMPI), Southern Region, a cooperative association representing over 2,500 dairy farmers in the South and Southwest, testified in opposition to Mid-Am's proposal to modify the producer definition of the 4 orders. The witness also maintained that such proposal is not related to the issue of transportation credits, and should, therefore, not be included in the reopened hearing.

According to the spokesman, the current producer pooling requirements under Order 7 are more restrictive than the proposed producer qualification requirements; thus, the proposal actually constructs an additional layer of unnecessary pooling requirements. The witness claimed that no handlers are currently abusing the order by diverting the maximum amount allowable under the provisions of Order 7; otherwise, he argued, such a high percentage of Class I utilization would not be maintained.

AMPI's witness also testified that it is apparent that the proponents intend to replace the base-excess plans in the 4 orders. However, such an alternative is not viable, he argued, because sufficient protection for local producers already exists. While acknowledging the existence of such ''dairy farmers for other market'' provisions in other Federal orders, the spokesman testified that the Southeast markets will not benefit from such a provision. If the proposal is nevertheless adopted, he said, AMPI recommends a modification to the proposal such that milk imported from outside the marketing area that is received at a fully or partially regulated plant during any month of the year must be allocated to Class I and the handler of origin must be compensated at the receiving plant's Class I price.

A second representative from AMPI also testified regarding Mid-AM's proposal to incorporate a ''dairy farmer for other markets'' provision in the 4 orders. She stated that administration of such a provision would create additional costs and place a more serious burden on the cooperative. According to the witness, additional time and resources would be necessary to adapt AMPI's procedures to the new provision, including greater technical and manual assistance.

A representative of Piedmont Milk Sales testified that Piedmont supports the concept that a producer must make his milk available to the Class I market when it is needed in the fall or short period in order to be allowed to pool his milk in the same market during the spring or flush months. He contended that such a limitation assures that the producer who receives the blend price enhanced by the Class I value in those markets has actually earned it.

A spokesman for Fleming Dairy, which operates pool distributing plants in Nashville, Tennessee, and Baker, Louisiana, testified in support of Mid-Am's proposal, but suggested that the producer qualification period should be July through November, rather than August through November.

Additionally, a representative of Barber Pure Milk Co., a pool plant operator in Birmingham, Alabama, and Dairy Fresh Corporation, a pool plant operator in Greensboro, Alabama, testified in support of Mid-AM's producer qualification proposal. He suggested that any milk which is delivered directly from the farm and is received at a pool plant should qualify as producer milk, but any milk which is diverted should not.

Briefs. Select Milk Producers submitted a brief in opposition to the proposed changes in the producer definition. According to Select, a similar proposal was introduced during the Southeast merger proceedings and was subsequently denied due to the lack of justification for such a provision. Select's brief indicated that the pooling standards and diversion limitations provided in the orders give the market administrator enough flexibility to prevent distant milk from being associated with the 4 markets; therefore, a ''dairy farmer for other markets'' provision is not needed in these orders.

A brief filed on behalf of AMPI argued that the ''dairy farmer for other markets'' proposal submitted by Mid-Am and CVMPA and heard at the reopened hearing was in violation of the rules of practice and procedure governing the proceedings of marketing agreements and orders. AMPI maintains that this proposal does not qualify as an issue related to transportation credits, and therefore, should not have been discussed at the reopened hearing. Additionally, AMPI argued that the hearing record lacks the necessary evidence that would support adoption of such proposal. While reiterating its opposition to the additional work associated with implementation of the proposal as testified to at the reopened hearing, AMPI's brief also opposed the notion that in Mid-Am and CVMPA's proposal determination of a producer's eligibility would not only be dependent upon the amount of milk pooled under the order in which the producer is seeking producer status, but also upon the volume of milk pooled by that producer for the subject months in all 4 of the orders. According to AMPI, there is no justification or evidence which supports the proposed ''dairy farmer for other markets'' provision.

CVMPA, one of the proponents of the producer qualification proposal, filed a brief in support of its proposal reiterating the arguments presented during the reopened hearing. In its brief, CVMPA pointed out that its proposal would not create a barrier to entry into these markets as was testified to by a representative of AMPI. CVMPA argued that such a proposal would actually encourage milk to be pooled when local supplies are inadequate to meet Class I needs. While acknowledging that diversion limitations and producer touch-base provisions currently in effect under the subject orders do provide limited Class I utilization protection for the markets, CVMPA argued that these limitations are insufficient to protect producers who have pooled their milk during the fall months from being displaced by producers entering those markets during the spring flush months in order to take advantage of the high Class I utilization percentages reflected in the high blend prices of these southeastern markets.

CVMPA also addressed the argument made by AMPI that the proposal would create an additional administrative burden for both the market administrators' offices and reporting handlers. According to CVMPA, no additional work would be created by the proposal, and the administration of the proposed provision would be easier than that associated with the former base-paying plans. CVMPA also expanded the proposal to allow a producer to qualify as a producer in the spring if his/her farm had not delivered Grade A milk from such farm during the previous August through November period. Furthermore, CVMPA stated that the producer's eligibility should be based upon the proportion of Grade A milk delivered from the farm in the previous fall in order to prevent a producer who is converting from Grade B to Grade A or a producer who lost his/her Grade A permit from being penalized.

A brief was also filed by Mid-Am in support of the proposal to modify the producer definition. In addition to reiterating the arguments testified to during the reopened hearing, Mid-Am's brief stated that the proposed producer qualification provisions are necessary to foster orderly marketing in the area and also to protect the producer pools of the 4 orders. In its brief, Mid-Am also contends that the only opposition to the proposal testified to during the hearing was made by AMPI, which would be prevented from rotating their producers' milk in order to receive transportation credits. Mid-Am requests that the proposed provisions be implemented at the earliest possible date.

Conclusion. The record of the reopened hearing does not clearly demonstrate the need to amend the producer definition of Orders 5, 7, 11, and 46. Current safeguards exist to ensure that sufficient supplies of milk are made available for fluid use without the unwarranted pooling of additional supplies of milk that are not associated with serving the fluid market.

Proponents of this proposal believe that the termination of seasonal base plans will create disorderly marketing conditions in the 4 orders. However, the testimony and evidence received at the December 17–18, 1996, hearing do not sufficiently support this argument. According to the proponents, the termination of seasonal base plans, effective January 1, 1997, removes the incentive for producers to pool their milk during the short months when milk is needed in the Southeast because they will no longer receive the higher base prices for their milk during the following flush months. While it is feared by the proponents that the termination will open up the 4 Southeast markets to those producers not normally associated with such markets, but who seek to take advantage of the high Class I utilization rates, the record was unconvincing in its need for modification of the producer definition for this reason.

It is apparent that the proposal was initiated in response to the elimination of seasonal base plans in Federal milk orders. In other words, the proposed modification of the producer definition is intended to fill the void left by the removal of the base-excess plans. However, changing the producer definition should not be compared to

the incorporation of base plans in the orders. Base plans are instituted in order to level out production throughout the year so that adequate milk supplies are ensured during the short production months, while discouraging surplus supplies in the flush production months. The base plans also did have the effect of preventing producers not normally associated with a market from entering such market during the flush production months because they would have received the low, excess price for their milk. Nevertheless, the removal of base plans does not by itself necessitate amending the orders.

The orders currently have strict pooling requirements. For example, as was testified to at the reopened hearing by AMPI's spokesman, the pooling requirements for Order 7 specify that a producer's milk must be received at least 4 days at a pool plant to be eligible to be pooled during the months of December through June. Additionally, there is a 50 percent diversion limitation in Order 7 to nonpool plants for those same months. The Carolina and Tennessee Valley orders also have diversion limitations for cooperative associations during most months of 25 percent of the total quantity of producer milk. They also maintain pooling requirements specifying how many days a month producer milk must be received at pool plants. The Louisville-Lexington-Evansville order specifies a diversion limitation based upon the number of days that a producer's milk is diverted during a month. The evidence in this proceeding is insufficient to conclude that the current pooling standards will not recognize the seasonally varying needs for milk for fluid use. The creation of additional producer pooling standards is unnecessary and unwarranted on the basis of the record herein and, therefore, the proposal should be denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Dated: July 17, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–19370 Filed 7–22–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 550 and 563e

[No. 97–68]

RIN 1550–AB09

Fiduciary Powers of Federal Savings Associations; Community Reinvestment Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to revise its fiduciary powers regulations in order to promote the more efficient operation and supervision of Federal savings associations' fiduciary activities. The proposed changes are intended to update, clarify, and streamline OTS regulations, to incorporate significant interpretive guidance, and to eliminate unnecessary regulatory burden. OTS proposes these revisions pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA). OTS also proposes to amend its Community Reinvestment Act (CRA) regulations. The proposed change would bring the scope of OTS's CRA regulation into accord with the CRA regulations of the other federal banking agencies. It would exempt from the CRA regulations savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business.

DATES: Comments must be received on or before September 22, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97–68. These submissions may also be hand-delivered to 1700 G Street, N.W., from 9:00 A.M. to 5:00 P.M. on business days; sent by facsimile transmission to FAX Number (202) 906–7755; or sent by e-mail to public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Larry Clark, Senior Manager, Compliance and Trust Programs, Compliance Policy, (202) 906–5628; Timothy Leary, Counsel (Banking and Finance), (202) 906–7170, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

II. Background

In 1995, pursuant to the Reinvention Initiative and section 303 of CDRIA, OTS conducted a comprehensive review of its rules and regulations. As part of that review, OTS identified its trust regulations at 12 CFR Part 550 for updating and streamlining.

Part 550 is promulgated under Section 5(n) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(n), which authorizes the Director of OTS to authorize a Federal savings association to exercise fiduciary powers. Congress enacted section 5(n) in order to give Federal savings associations the ''ability to offer trust services on the same basis as national banks'' and to ''enhance the ability of thrifts to offer complete financial service to the consumer.''[1]

As originally enacted, section 5(n) of the HOLA empowered the Federal Home Loan Bank Board (FHLBB), the predecessor agency to OTS, to issue regulations regarding the proper exercise of Federal association trust powers.[2] Pursuant to that authority, the FHLBB issued the current part 550 in December, 1980.[3] These regulations have not been substantially changed since their promulgation.

Since 1980, however, much about Federal savings associations' fiduciary business has changed. These changes have affected the nature and scope of the fiduciary services that associations offer, and the structures and operational methods that associations use to deliver those services. OTS's primary goals in revising part 550 are to accommodate these changes, remove unnecessary regulatory burden, and facilitate the continued development of Federal

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[1] S. Rep. 96–368 at 13 (1980), reprinted in 1980 U.S.C.C.A.N. 248. Congress further amended § 5(n) in the Financial Institutions Reform, Recovery and Enforcement Act (''FIRREA'') of 1989. Pub. L. 101–73.

[2] 12 U.S.C. 1464(n)(10)(D)(1980).

[3] 45 FR 82162 (December 15, 1980).

savings associations' fiduciary business consistent with safe and sound banking practices.

Today's proposal has several themes. First, the proposal recognizes that the geographic and organizational structure of many Federal savings associations' fiduciary operations has changed considerably over the years. Consequently, OTS proposes to adjust part 550 so that its requirements are workable for both large, multi-state fiduciary organizations and small institutions that conduct fiduciary activities primarily on a local basis.

Second, Federal savings associations' fiduciary activities, in several respects, are subject to State law. In some cases, OTS has the flexibility to prescribe a uniform Federal standard or to direct Federal savings associations to follow State law. In the proposal, OTS has attempted to strike an appropriate balance between Federal and State law.

Third, over the years, part 550 has been interpreted to apply to investment advisory activities and related services which do not involve the association's exercise of investment discretion. In some cases, savings associations engaged in these activities operate under different standards than other financial service providers that conduct the same business.

Finally, consistent with section 303 of CDRIA, the proposal conforms OTS rules more closely to those rules of other Federal banking agencies, specifically the rules issued by the Office of the Comptroller of the Currency (OCC) at 12 CFR Part 9. Section 5(n) of the HOLA closely resembles 12 U.S.C. 92a, which authorizes the OCC to grant fiduciary powers to national banks. In December 1996, the OCC comprehensively revised its rules governing national banks' fiduciary operations. 61 FR 68543 (December 30, 1996). To promote continuity and reasonable consistency in the exercise of fiduciary powers by Federally-chartered financial institutions, OTS's proposal draws extensively on the OCC's final rule and the comments the OCC received on its proposed rule. As a consequence, today's proposal more accurately reflects current legal, regulatory, and business developments in the area of fiduciary services and activities.

II. Section-by-Section Description of the Proposal

Proposed § 550.1 (Authority and Scope)

Proposed § 550.1 is a new provision. It explicitly states the statutory authority for, and the purpose and scope of, part 550.

Proposed § 550.2 (Definitions)

The proposal moves the definitions currently found at § 550.1 to proposed § 550.2. Some definitions are removed and others are added. Significant changes are highlighted below.

Affiliate

The proposal adds a definition of ''affiliate'' to part 550. The proposed definition follows the OCC's fiduciary powers regulation by cross referencing the definition in the Federal Reserve Act at 12 U.S.C. 221a(b). That definition varies from OTS's current default definition of ''affiliate'' found at 12 CFR 561.4. Specifically, the Federal Reserve Act definition includes holding companies as affiliates, whereas OTS's standard definition does not. To reflect the variety of corporate structures through which Federal savings associations exercise their fiduciary powers, and to promote regulatory consistency with the OCC's new Rule 9, OTS proposes to adopt the Federal Reserve Act definition of ''affiliate.''

Applicable Law

The term ''local law'' is used throughout existing part 550. Currently, § 550.1(g) defines local law as the law of the State or other jurisdiction governing the fiduciary relationship. The proposal would replace the term ''local law'' with ''applicable law.'' This change would clarify that the legal authority governing a Federal savings association's fiduciary relationships may include Federal law and regulations governing fiduciary relationships, State laws governing these relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.[4] Applicable law would not incorporate any State law or other body of authority that would not otherwise apply to a Federal savings association's fiduciary activities, such as licensing, examination, access to examination reports, and other matters left to Federal law under this regulation.

Recently, a number of savings associations have asked OTS about how State law applies to their exercise of fiduciary powers, including when those fiduciary powers are exercised in an operating subsidiary or other subsidiary. Section 5(n) of the HOLA recognizes a specific role for State law in Federal savings associations' exercise of fiduciary powers, unlike other operations of Federal savings associations.

In a recent legal opinion, OTS determined that State law applies to Federal savings associations' fiduciary activities to the extent specifically provided by section 5(n) of the HOLA. This includes the scope of those powers (§ 5(n)(1)), capitalization requirements (§ 5(n)(2)), the deposit of securities with State authorities (§ 5(n)(5)), and provision of an oath or affidavit from trust fiduciaries (§ 5(n)(6)).[5] OTS requests comment on the scope of federal preemption for Federal savings associations and their subsidiaries in dealing with other State law requirements in this area.

Fiduciary Capacity

Under existing § 550.1(c), fiduciary means ''a Federal savings association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking.'' The current definition also lists the specific fiduciary capacities enumerated in section 5(n) of the HOLA (trustee, executor, administrator, guardian) and several other fiduciary capacities in which State banks, trust companies, or other corporations competing with Federal savings corporations are permitted to act under State law (receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, and trustee of employee pension, welfare, and profit sharing trust).

Under the proposal, the term ''fiduciary capacity'' would replace ''fiduciary.'' The proposed definition of ''fiduciary capacity'' attempts to establish a clear, objective boundary for the coverage of Part 550 while retaining the traditional core concept that serving in a fiduciary capacity involves acting on another's behalf. Under the proposed definition, fiduciary capacity includes specific fiduciary activities, such as acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minors act. In addition, fiduciary capacity would include any capacity in which the association possesses investment discretion on behalf of another, and any other similar capacity that OTS authorizes under 12 U.S.C. 1464(n).

[4] Relevant Federal law includes the HOLA (12 U.S.C. 1461 *et seq.*), the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the Investment Advisor's Act of 1940 (15 U.S.C. 80b–1 *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), and rules issued pursuant to those acts.

[5] OTS Op. Chief Counsel (March 28, 1996) at 8–9.

The proposed definition also includes a Federal savings association that acts as an investment advisor for a fee, even though the association may not act in any traditional fiduciary capacity or exercise investment discretion.[6] This provision recognizes that when a customer pays a fee in return for investment advice, whether or not the customer follows that advice, the customer has a reasonable expectation of receiving advice that is free of conflicts of interest. It is also consistent with other Federal statutes that provide enhanced protection to customers of certain investment advisers who receive a fee.[7]

On July 9, 1997, the OCC proposed to issue an interpretive ruling codifying a recent interpretive letter that clarified how the OCC intends to apply the term ''acting as an investment adviser for a fee.''[8] The OCC interprets the term ''investment adviser'' to generally mean a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). The qualifying phrase ''if the bank receives a fee for its investment advice'' excludes those activities in which the investment advice is merely incidental to other services.

Under the OCC interpretation, a national bank that engages in full-service brokerage activities may provide investment advice for a fee, depending upon the commission structure and the specific facts. The OCC will consider full-service brokerage to involve investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940.[9]

The OCC also has indicated that certain activities generally will not entail providing investment advice for a fee. These include financial advice and counseling, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general; client-directed investment activities where the fee does not depend on the provision of investment advice; investment advice incidental to acting as a municipal securities dealer; real estate asset management; real estate consulting; advice concerning bridge loans; services for homeowners' associations; tax planning and structuring advice; and investment advice authorized the OCC under 12 U.S.C. 24 (Seventh) as an incidental power necessary to carry on the business of banking.

OTS agrees with the OCC's interpretation and intends to apply it when determining whether a Federal savings association is acting as an ''investment adviser.'' OTS invites comment on the OCC interpretation and whether similar language should be incorporated into the OTS final rule or guidance.

The OCC, in its December, 1996 revisions to Part 9, considered relying on State law as an alternative dividing line between fiduciary and non-fiduciary investment advisory activities. Under a State law approach, for example, part 550 would apply to an association's investment advisory activity if that activity, when engaged in by competing State fiduciaries, would require State authorization and would be regulated as a fiduciary activity under State law.

While the OCC rejected this approach in its final rule, OTS invites comment on this and other alternative approaches to defining which investment advisory activities to include within the definition of fiduciary capacity.

The adoption of any approach that excludes some types of investment advisory activities from coverage under part 550 raises the question of how to oversee ''non-fiduciary'' investment advisory activities. Some of these activities already are subject to the Interagency Statement on Retail Sales of Non-deposit Investment Products (February 14, 1994),[10] and the anti-fraud provisions of the Securities Exchange Act of 1934.[11] A Federal savings association also must conduct all its activities, including its investment advisory activities, in a manner consistent with safe and sound banking practices.

Finally, OTS notes that employees of banks who engage in certain securities transactions for customers are subject to various recordkeeping and confirmation regulations.[12] OTS is considering whether to issue a separate proposed rulemaking adopting similar rules for employees of savings associations who engage in non-fiduciary investment advisory services. As such, OTS invites comment on whether such requirements should be considered in a future rulemaking.

Fiduciary Officers and Employees

Existing part 550 uses the term ''trust department'' to refer to the group of employees that are assigned fiduciary responsibilities. The proposal replaces this term with the term ''fiduciary officers and employees.'' This proposed change reflects the increasing diffusion of fiduciary functions throughout a Federal savings association.

Fiduciary Powers

The proposed definition of ''fiduciary powers'' in § 550.2 specifies that the scope of a Federal savings association's fiduciary powers depends upon the power that the State in which the Federal savings association is located grants to competing fiduciaries. *See* 12 U.S.C. 1464(n)(1). This is consistent with the OCC's definition of fiduciary powers for national banks in new § 9.2(g).

Under OTS's current regulations and past interpretive opinions, a federal thrift is located, for trust purposes, in each State where it operates a trust office.[13] A trust office may be the association's home office, any branch office, any agency office, or alternatively, a fiduciary presence within a State that is the functional equivalent of operating a brick and mortar trust office—a so-called *de facto* trust office.[14] Thus, a Federal savings

[6] Part 550 continues to apply to associations acting in the enumerated fiduciary capacities (*e.g.*, trustee) even though the association has no investment discretion and receives no fee for investment advice. OTS notes, however, that a Federal savings association that acts as trustee of certain stock bonus, pension or profit sharing plans, IRAs, and fiduciary accounts with no active fiduciary duties may be exempted from part 550 under proposed § 550.3.

[7] *See e.g.*, 29 U.S.C. 1002(21)(A) (fiduciaries of ERISA accounts); 15 U.S.C. 80b–2(a)(11) (Investment Advisers Act, which generally applies to any person who, for compensation, engages in the business of advising others. Although banks are exempt from the Investment Advisers Act, Federal savings associations are not, and investment advisers employed by Federal savings associations must therefore register with the SEC).

[8] 62 FR 36746 (July 9, 1997), codifying Interpretive Letter No. 769 (January 28, 1997).

[9] 15 U.S.C. 80b–1, *et seq.*

[10] The four Federal banking agencies have issued a clarification of the Interagency Statement. *See* Joint Interpretation of the Interagency Statement on Retail Sales of Nondeposit Investment Products (Sept. 12, 1995).

[11] *See, e.g.*, 15 U.S.C. 78i (manipulation of securities prices), 78j (manipulative and deceptive practices), 78r (liability for misleading statements), 78z (unlawful representations).

[12] 12 CFR Part 12 (OCC); 12 CFR 208.8(k) (FRB); 12 CFR Part 344 (FDIC). These rules are currently being revised by the Federal banking agencies.

[13] 12 CFR 550.2(c)(2); OTS Op. Chief Counsel (June 21, 1996).

[14] OTS Op. Chief Counsel (March 28, 1996). Conversely, OTS has found that an association will not be ''located'' in states in which it only markets its trust services (OTS Op. Chief Counsel (June 21, 1996)), or performs certain activities incidental to serving as a testamentary trustee or a trustee holding real estate. (OTS Op. Chief Counsel (August 8, 1996). The interpretive letters reaching these conclusions were each based on a specific, detailed

Continued

association may provide trust services from office located in more than one State.[15]

Investment Discretion

As discussed above, fiduciary capacity would include any capacity in which the association possesses investment discretion on behalf of another. With respect to an account, ''investment discretion'' is defined as the authority ''to determine what securities or other assets to purchase or sell on behalf of the account.'' This term would apply whether the investment discretion is sole or shared. Moreover, a savings association would have investment discretion where it receives delegated authority over investments and where it delegates this authority to another.

Proposed § 550.3 (Exempt Activities)

Currently, OTS approval under part 550 is not required for a Federal savings association to act as trustee or custodian of certain trusts and accounts. *See* 12 CFR 545.102. Under this provision, a savings association may act as a trustee or custodian of an Individual Retirement Account or a Keogh account, including self directed accounts. The association may also act as a trustee with no active fiduciary duties, if applicable law authorizes it to act in that capacity. Under this provision, however, the association may invest the funds of the trust or account only: (1) in the association's own accounts, deposits, obligations or securities, or (2) in such other assets as the customer may direct, provided that the association does not exercise any investment discretion or provide any investment advice with respect to the trust or account assets. Section 545.102 further requires the Federal savings association to observe principles of sound trust administration, including those relating to recordkeeping and segregation of assets, and requires the association to make certain specific disclosures.

In order to more efficiently organize OTS's fiduciary regulations and to clarify when applications for fiduciary powers are required, the proposal would move current 12 CFR 545.102, with slight modifications, to new § 550.3.

Proposed § 550.4 (Approval Requirements)

Proposed § 550.4 would clarify and streamline the requirements governing applications for fiduciary powers. The current requirements are found at § 550.2.

Proposed § 550.5 (Administration of Fiduciary Powers)

Proposed § 550.5 would govern the administration of fiduciary powers. Paragraph (a) of the proposal would continue to place the primary responsibility for the proper exercise of a Federal savings association's fiduciary activities on its board of directors. The board may continue to assign functions related to the exercise of fiduciary powers to any director, officer, employee, or to a committee of directors, officers or employees. *Compare* existing § 550.5(a)(1).

Paragraph (b) would address the use of personnel and facilities. Under this provision, a Federal savings association may use its personnel and facilities to perform services related to the exercise of its fiduciary powers. Moreover, any department of the association may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law. *See* existing § 550.5(b). The proposed rule would also permit a Federal savings association to use the facilities of an affiliate to perform services related to its fiduciary activities, and allow an affiliate to use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers. Such authority does not, of course, restrict OTS's ability to impose conditions on a Federal savings association's relationship with its affiliates.

Proposed § 550.5(c) is a new provision addressing agency agreements. This provision would clarify that a Federal savings association may enter into a written agency agreement with another entity to purchase or sell services related to the exercise of fiduciary powers. This provision provides Federal savings associations with greater flexibility and is consistent with recent agency guidance.[16] As with an association's relationships with its affiliates, this provision does not restrict OTS's ability to impose conditions on an association's agency agreements. Finally, proposed paragraph (d) retains the existing requirement that all fiduciary officers and employees must be adequately bonded. *See* existing § 550.5(e).

Proposed § 550.6 (General Standards for the Exercise of Fiduciary Powers)

Proposed § 550.6 sets out general standards that a Federal savings associations must meet in exercising its fiduciary powers. The proposal specifies that a Federal savings associations must exercise its fiduciary powers prudently and in compliance with applicable law. Proposed § 550.6 further specifies that a Federal savings association must use standards in exercising its fiduciary powers that are consistent with safety and soundness, promote sound fiduciary administration, and enable the association to monitor the conditions of its fiduciary operations. The standards should also take into account an association's size, the nature and scope of its fiduciary operations, and the conditions in the market in which it exercises fiduciary powers.

In its recent revisions of its fiduciary powers regulation, the OCC included a provision, 12 CFR 9.5, requiring national banks to maintain and follow written policies and procedures in certain areas. Several of those areas, such as brokerage placement practices, the use of material inside information when buying or selling securities, the selection and retention of readily available legal counsel, and the investment of funds held as fiduciary, were drawn from various existing sections of the OCC's prior fiduciary powers regulation. The new final OCC rule gathered those separate requirements into one section, and added a requirement that national banks adopt and follow written policies and procedures addressing methods for preventing self-dealing and conflicts of interest.

After consideration, OTS has decided not to specifically require written policies and procedures in its regulation. Adopting a provision similar to 12 CFR 9.5 would require Federal savings associations to adopt and follow written policies and procedures in four areas not found in current Part 550: brokerage placement services, methods for preventing self-dealing and conflicts of interest, selection and retention of readily available legal counsel, and the investment of funds held as fiduciary. Proposing similar requirements for Federal savings associations would impose an additional regulatory burden by expanding the areas in which Federal savings associations must maintain and follow written policies and procedures.

OTS has opted for a less rigid approach that will still require associations to exercise their fiduciary

set of facts. An institution interested in conducting such operations should carefully consult those letters and its trust counsel, and discuss its proposed business plan with the appropriate OTS regional office.

[15] OTS Op. Chief Counsel (December 24, 1992). *See also* 12 CFR 556.5 (authorizing Federal savings association to expand their branch operations nationwide).

[16] Op. Chief Counsel, Office of Thrift Supervision (November 22, 1995).

powers prudently and in compliance with applicable law. We believe this is consistent with the intent of section 2242 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 110 Stat. 3009–418, which amended section 303(a) of the CDRIA, 12 U.S.C. 4803(a), by requiring each Federal banking agency to ''review the extent to which existing regulations require insured depository institutions . . . to produce unnecessary internal written policies and eliminate such requirements, where appropriate.''

The only provision in current Part 550 relating to written policies and procedures is current § 550.5(c), which requires a Federal savings association to adopt and follow written policies and procedures to ensure compliance with the Federal securities laws. That section further specifies that those policies and procedures should ensure that fiduciary departments not use material inside information in connection with the sale or purchase of securities.[17]

By deleting current § 550.5(c), OTS does not intend to remove the requirement that Federal savings associations comply with the Federal securities laws. In this regard, proposed § 550.6 states that a Federal savings association must exercise its fiduciary powers ''in compliance with applicable law.'' As noted above, the term ''applicable law'' includes all the relevant Federal securities laws. Federal savings associations may find that adapting written policies and procedures will enhance their ability to comply with applicable laws and operate prudently.

Federal savings associations can find additional guidance regarding standards for the exercise of fiduciary powers in Section 210 of the Trust Activities Handbook. Section 210 discusses the advantages of maintaining and following written policies and procedures and provides illustrative examples of the areas those policies and procedures should cover. Those examples include conflicts of interest, asset and account administration, operations, personnel, and business development and profitability. *See* Trust Activities Handbook at 97–98.

Proposed § 550.7 (Review of Assets of Fiduciary Accounts)

Currently, § 550.5(a)(2) addresses the review of assets contained in fiduciary accounts. Proposed § 550.7 incorporates the requirements of this existing regulation, but reorganizes, clarifies and streamlines the text.

Under the proposed rule, a Federal savings association must conduct three types of reviews of fiduciary accounts—a pre-acceptance review, an initial post-acceptance review, and an annual review. In a pre-acceptance review, an association must review a prospective account prior to its acceptance to determine whether the association can properly administer the account. In the initial post-acceptance review, an association must conduct a prompt review of all assets of a fiduciary account for which it has investment discretion to evaluate whether the assets are appropriate for the account. At least once during every calendar year thereafter, the association must conduct a similar review of assets of each fiduciary account for which it has investment discretion.

Existing § 550.5(a)(2) requires that each annual review must occur within 15 months of the prior annual review. OTS believes that this requirement is too rigid, raises timing issues, and may not contribute to safety and soundness. Accordingly, the OTS proposal does not retain this requirement.

Proposed § 550.8 (Recordkeeping)

Under proposed § 550.8, a Federal savings association would be required to maintain adequate records for all fiduciary accounts (including adequate documentation of the establishment and termination of each fiduciary account)[18] for all fiduciary accounts for a specified period, and ensure that fiduciary records are kept separate and distinct from other records of the association. These requirements implement section 5(n)(2) of the HOLA and reflect the substance of existing §§ 550.5(a)(2) and 550.6.

Under existing § 550.6, a Federal savings association must retain fiduciary records ''for such time as to enable the Federal savings association to furnish such information or reports with respect thereto as may be required by the [OTS].'' By contrast, the proposed rule would require an association to retain fiduciary records for three years from the later of the termination of the account or termination of litigation relating to the account. OTS believes that the proposed three-year retention period is easier to apply and understand.

Proposed § 550.9 (Audit of Fiduciary Activities)

Under existing § 550.7, a Federal savings association must perform a suitable annual audit of its fiduciary operations. Proposed § 550.9 retains the substance of this section with certain clarifications of current OTS policy.

Proposed § 550.9(a) requires the association to conduct a suitable audit of all significant fiduciary activities at least once during each calendar year and to report the results of the audit (including all significant actions taken as a result of the audit) in the minutes of the board of directors. The proposal clarifies that the audit requirement applies to all significant fiduciary activities. Thus, an association would not be required to audit *de minimis* activities. OTS intends the *de minimis* standard to apply in very limited circumstances, such as where an association has only one small account under a particular fiduciary activity.

Paragraph (b) of the proposed rule clarifies that the required audit program may be implemented either through an annual or a continuous audit.[19] Under a continuous audit system, the association may perform discrete audits of specific activities at intervals appropriate for the nature and risk of that activity. For example, an association may determine that it is appropriate to audit certain low-risk fiduciary activities every 18 months. An association that adopts a continuous audit system must report the results of any discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

The proposed audit standards at § 550.9(c) restate the existing requirements in § 550.7. This paragraph provides that an audit must ascertain whether the association's internal control policies and procedures provide reasonable assurance that fiduciary activities are administered in accordance with applicable law, fiduciary assets are properly safeguarded, and transactions are accurately recorded in the appropriate accounts in a timely manner. In addition, proposed paragraph (c) requires audits to be conducted in accordance with generally accepted standards for attestation engagements (and other standards established by OTS). An audit may be conducted by

[17] The current 12 CFR 9.5 requires that a national bank adopt and follow written policies and procedures only in preventing the use of inside information, not the broader requirement in current § 550.5(c) that those policies and procedures more generally ensure compliance with the federal securities laws.

[18] The adequacy of an association's records may be determined only on a case-by-case basis. Section 5(n)(2) of the HOLA, however, provides some guidance. It requires the association to maintain a separate set of books and records ''showing in proper detail all transactions. . . .''

[19] This change is consistent with current OTS policy. *See* Trust Activities Regulatory Handbook (1992) at 142.

external or internal auditors, or other qualified persons who are responsible only to the association's board of directors.

All audits, whether annual or continuous, must be performed under the direction of the association's fiduciary audit committee. Under the proposed rule, the audit committee may consist of a committee of the association's directors or an audit committee of an affiliate of the association. By contrast, the current rule does not expressly permit an audit committee of an affiliate to conduct audits. *Compare* existing § 550.7(a).

The proposed change will allow a savings and loan holding company to audit the fiduciary activities of its subsidiary Federal savings association through a central audit committee. This will facilitate the consolidation of functions within a holding company structure. Even where the audit is performed under the direction of an affiliate's audit committee, the Federal savings association's board of directors is still ultimately responsible for the association's fiduciary activities. *See* proposed § 550.5(a).

Existing § 550.7(a) requires the audit committee to be independent of management. The proposal provides guidance regarding the independence of the audit committee. Specifically, proposed § 550.9(d) states that the audit committee may not include any officers of the association or an affiliate who participate significantly in the administration of the association's fiduciary activities. Additionally, a majority of the members of the audit committee may not also be members of a committee to which the board of directors has delegated power to manage and control the fiduciary activities of the association.

OTS invites comment on the relationship between the audit requirement and OTS's fiduciary examination process. In particular, commenters should address the extent to which OTS examiners should rely on an association's internal or external fiduciary audits.

Proposed § 550.10 (Fiduciary Funds Awaiting Investment or Distribution)

Under current § 550.8(a), a Federal savings association may not allow fiduciary funds to remain uninvested and undistributed any longer than reasonable for proper account management. Proposed § 550.10(a) clarifies this requirement in two ways. First, the proposal explicitly recognizes that applicable law may limit the amount of time that funds may remain uninvested. Second, it clarifies that the prohibition applies only to fiduciary accounts over which the association has investment discretion or discretion over distributions.

With respect to a fiduciary account for which a Federal savings association has investment discretion, proposed § 550.10(a) requires the association to obtain a rate of return for funds awaiting investment or distribution that is consistent with applicable law. This provision prescribes a uniform policy for the investment of all idle funds and recognizes the role that applicable law may play in prescribing standards in this area. *Compare* existing § 550.8(b)(3) (funds waiting investment or distribution ''shall be made productive.'')

Proposed § 550.10(b) addresses self deposits. Like the existing regulation at § 550.8(b), the proposed rule permits a Federal savings association to deposit fiduciary funds awaiting investment or distribution in other departments of the Federal savings association, unless the deposit is prohibited by applicable law. To the extent that funds are not FDIC-insured, the association would be required to secure the deposit with collateral.

Under the existing rule, acceptable collateral includes direct obligations of the United States, other fully guaranteed obligations of the United States, readily marketable securities of the classes in which State-chartered corporate fiduciaries may invest under State law, and other readily marketable securities as OTS may determine.

The proposal would add two new classes of acceptable collateral for self-deposits—assets that qualify under State law as appropriate security for deposits of fiduciary funds and surety bonds unless they are prohibited by applicable law. OTS believes that a surety bond is comparable to other forms of security permitted as collateral for self-deposits. OTS believes that this interpretation will promote the interests of beneficiaries while ensuring that Federal savings associations are not disadvantaged in States that permit state-chartered institutions to secure deposits of idle fiduciary funds with surety bonds. OTS is considering whether to adopt a uniform national standard that would allow Federal savings associations to use surety bonds as collateral, without regard to State prohibitions. OTS invites public comment on this issue.

The proposed rule includes a new provision at § 550.10(c) which addresses the deposit of idle fiduciary funds with affiliates. Section 5(n)(3) of the HOLA authorizes a Federal savings association to pledge assets to secure self deposits of fiduciary funds. This provision, thus, accommodates an association with a trust department and a savings department, the organizational structure prevalent in 1980. However, the statutory language does not address the evolution of Federal savings association organizational structures in recent years.

Today, some Federal savings associations do not operate departments that accept deposits of idle fiduciary funds. In some cases, however, these associations may be affiliated with other depository institutions that will accept such deposits. Other Federal savings associations operate as part of a large system of affiliated financial institutions and wish, for reasons of efficiency, to consolidate their fiduciary payment and disbursement functions in a single entity.

In these situations, a Federal savings association may wish to deposit idle fiduciary funds with an affiliated entity.

Consequently, OTS proposes to allow a Federal savings association to deposit idle fiduciary funds with an affiliate, if not prohibited by applicable law. A Federal savings association must set aside acceptable collateral, as described above, as security for a deposit by or with an affiliate, unless prohibited by applicable law. This change is consistent with the position taken in OCC's revised part 9, and should facilitate more efficient fiduciary operations in multi-entity holding companies.

Proposed § 550.11 (Investment of Fiduciary Funds)

Proposed § 550.11 simply directs a Federal savings association to invest funds in a fiduciary account in a manner consistent with applicable law. This section condenses the existing provisions on the investment of fiduciary funds without any change in substance. *Compare* existing § 550.9.

Proposed § 550.12 (Collective Investment Funds)

Proposed § 550.12 governs the establishment and operation of common trust funds and other collective investment funds by Federal savings associations. Common trust funds maintained for the investment and reinvestment of funds held in a fiduciary capacity may be exempted from taxation under section 584 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 584). Section 584 requires the funds to meet the standards for collective investment under the OCC's regulations (12 CFR 9.18), regardless of the identity of the financial institution fiduciary. Thus, Federal savings associations maintaining section

584 common trust funds are bound by the OCC regulations.

Accordingly, the proposed rule requires Federal savings associations to observe the requirements of 12 CFR 9.18 in administering any common fund. *Compare* existing § 550.13(b). In its recent rulemaking, the OCC promulgated various rule changes designed to lift unnecessary regulatory burdens on institutions that administer collective investment funds, while preserving appropriate protections to beneficiaries (and other interested parties). The OTS proposed rule continues to cross-reference the OCC regulation, as recently amended.

Proposed § 550.13 (Self-dealing and Conflicts of Interest)

Proposed § 550.13 addresses self-dealing and conflicts of interest. This section retains much of the substance of existing § 550.10.

Unless authorized by applicable law, proposed § 550.13(a)(1) would prohibit a Federal savings association from investing funds in stocks or obligations of, or assets acquired from, the association or any of its directors, officers or employees; affiliates of the association or any of their directors, officers or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association. The proposed rule would clarify that the general prohibition against self-dealing and conflicts of interests only applies to those fiduciary accounts for which the Federal savings association has investment discretion. Proposed § 550.13(a)(2) specifically sets forth the conditions under which a Federal savings association may exercise the right to purchase additional stock or fractional shares of stock.

Proposed § 550.13(b) restates the existing prohibitions against loans, sales or other transfers from fiduciary accounts. *See* existing § 550.10(b). Under the proposal, a Federal savings association may not lend, sell, or otherwise transfer assets held in a fiduciary account for which the association has investment discretion to the association or any of its directors, officers, or employees; to affiliates of the association or any of their directors, officers, or employees; or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association. Proposed § 550.13(b)(1)(i) through (iv) retain the existing exceptions to this general prohibition, with one clarification. Section 5(n)(7) of the HOLA prohibits a Federal savings association from lending funds held in fiduciary accounts to its directors, officers, or employees. For ease of reference, proposed § 550.13(b)(2) restates this statutory prohibition.[20]

Finally, consistent with current § 550.10(d), the proposed rule would permit a Federal savings association to make loans to fiduciary accounts, sell assets between fiduciary accounts and make loans between fiduciary accounts. *See* proposed §§ 550.13(c), (d) and (e). Such loans and sales would be permitted if the transactions are fair to the fiduciary accounts and are not prohibited by applicable law.

Proposed § 550.14 (Custody of Fiduciary Funds)

Proposed § 550.14 retains the substance of existing § 550.11, which addresses custody of fiduciary assets. The proposal continues to require the association to place assets of fiduciary accounts in the joint custody or control of not fewer than two fiduciary officers or employees. The proposal also continues to allow a Federal savings association to maintain fiduciary assets off-premises, if consistent with applicable law. Consistent with section 5(n)(2) of the HOLA, a Federal savings association must keep fiduciary assets separate from the assets of the association. Further, the proposed rule would require the association to keep assets in each fiduciary account separate from all other accounts or to identify the investments as the property of a particular account (except when assets are invested in collective investment funds).

Proposed § 550.15 (Deposit of Securities With State Authorities)

Under section 5(n)(5) of the HOLA and current § 550.4, whenever local law requires corporations acting as fiduciaries to deposit securities with State authorities for the protection of trust accounts, a Federal savings association must make a similar deposit before it can act in a fiduciary capacity.[21] Proposed § 550.15 restates this general requirement with two clarifications.

First, the proposed rule would require a deposit only if the laws of the state in which the Federal savings association is located require the deposit.[22] In addition, the current rule does not address how to calculate the required deposit when an association administers trust assets from offices located in more than one State. The current rule is unclear whether the association must compute the deposit based on the amount of trust assets held in the State or the amount of all trust assets.

Consistent with current agency guidance, the proposed rule does not require a Federal savings association with multi-state trust operations to compute the State deposit based on its nationwide trust assets. To do so would go far beyond the deposit requirement's purpose of protecting trust assets in a particular State, and would unnecessarily burden an association with multi-state fiduciary operations.[23] Accordingly, the proposed rule would permit a Federal savings association to calculate the deposit requirement in each State based on the amount of trust assets administered primarily from offices located in that State.

Proposed § 550.16 (Fiduciary Compensation)

Proposed § 550.16 retains the substance of current § 550.12, which addresses fiduciary compensation. Under the proposal, a Federal savings association may charge a reasonable fee for its fiduciary services if the amount of the compensation is not set or governed by applicable law. The proposal further prohibits an officer or an employee of a Federal savings association from retaining any compensation for acting as a co-fiduciary with the association in the administration of a fiduciary account, except with the specific approval of the board of directors. Finally, the proposal prohibits a Federal savings association from permitting a fiduciary officer or employee from accepting a bequest or gift of trust assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by the association's board of directors.

Proposed § 550.17 (Receivership or Voluntary Liquidation)

The proposal retains the substance of current § 550.15, which addresses receivership and voluntary liquidation.

[20] The proposed rule permits an association to make these loans with respect to employee benefit plans in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108). Section 408 specifically authorizes loans to participants and beneficiaries of such plans under certain circumstances. Under these exemptions, the association may make loans to directors, officers, or employees that are participants or beneficiaries in the association's own ERISA plan or in ERISA plans that the association administers for other employers.

[21] 12 U.S.C. 1464(n)(5).

[22] *See* Op. Chief Counsel, Office of Thrift Supervision (December 24, 1992) (concluding that a Federal savings association should compute the amount of a required State deposit based on the amount of trust assets administered from offices located in that State, rather than on the amount of its nationwide trust assets).

[23] *Id.*

Proposed § 550.17 directs a receiver, conservator, or liquidating agent of a Federal savings association to promptly close, or transfer to a substitute fiduciary, all fiduciary accounts, in accordance with OTS instructions and the orders of the court having jurisdiction.

Proposed § 550.18 (Surrender of Fiduciary Powers)

Proposed § 550.18 sets forth the procedures that apply when a Federal savings association seeks to surrender its fiduciary powers. Specifically, paragraph (a) requires a Federal savings association to file a certified copy of a resolution of its board of directors evidencing its intent to surrender its fiduciary powers. If, after an appropriate investigation, the Regional Director is satisfied that the Federal savings association has been discharged from all fiduciary duties, the Regional Director will notify the association that it is no longer authorized to exercise its fiduciary powers. *See* proposed § 550.18(b). The proposal incorporates the OTS practice of providing a written notice rather than a certificate that the association is no longer authorized to exercise trust powers. *Compare* existing § 550.14(b).

Existing § 550.14 states that upon surrender of fiduciary powers, a Federal savings association is no longer subject to part 550, cannot exercise fiduciary powers, and is entitled to return of any deposit with State authorities. Except for the return of the State deposit, OTS believes that these provisions are self-evident and unnecessary. Accordingly, the proposed rule does not include these provisions.

Proposed § 550.19 (Revocation of Fiduciary Powers)

Proposed § 550.19 sets forth standards and procedures for the revocation of fiduciary powers. This section retains the standards currently set forth in existing § 550.16(a), pursuant to which OTS may revoke fiduciary powers if the association has unlawfully or unsoundly exercised its fiduciary powers, has failed to exercise its fiduciary powers for five consecutive years, or has otherwise failed to comply with part 550.

Existing § 550.16(b) details the procedural requirements governing the revocation of fiduciary powers. This rule generally repeats the statutory requirements for a hearing contained in the HOLA. Because the requirements are already set out in the statute, proposed § 550.19(b) simply states that OTS revocation procedures are set forth at 12 U.S.C. 1464(n)(10) and that the hearing required under 12 U.S.C. 1464(n)(10)(B) will be conducted in accordance with 12 CFR Part 509 (OTS regulations governing administrative hearings).

III. Miscellaneous Fiduciary Powers Provisions

Consolidation or Merger

In its recent rulemaking, the OCC deleted, without discussion, its regulation dealing with the consolidation or merger of two or more national banks. OTS's regulation dealing with that situation is currently found at § 550.3. This provision states that when two or more Federal savings associations merge, and one of those associations is authorized to exercise fiduciary powers, the resulting association is also authorized to exercise fiduciary powers. No new application to exercise those powers is necessary. OTS believes that this proposition is self-evident and not likely to be the subject of dispute. Accordingly, the proposal does not contain a provision that corresponds to existing § 550.3.

Transfer Agents

Also in its recent rulemaking, the OCC adopted § 9.20, which specified that the rules adopted by the Securities and Exchange Commission (SEC) under section 17A of the Securities and Exchange Act of 1934 (1934 Act) (15 U.S.C. 78q–1, *et seq.*) apply to the domestic activities of national bank transfer agents. Those rules are found at 17 CFR 240.17Ac2–2 and 240.17Ad–1 through 16.

Section 17A(c) of the 1934 Act (15 U.S.C. 78q–1(c)) provides, *inter alia,* that transfer agents must register with their appropriate regulatory agencies. Under section 3(a)(34)(B) of the 1934 Act (15 U.S.C. 78c–3), the appropriate regulatory agency for banks is the OCC, the Board of Governors of the Federal Reserve Board, or the Federal Deposit Insurance Corporation.

The appropriate regulator for Federal savings association transfer agents, however, has always been the SEC. Thus, Federal savings association transfer agents are already subject to the SEC rules adopted under section 17A of the 1934 Act. Consequently, while a transfer agent is within the definition of fiduciary capacity for Federal savings associations, review of compliance with the SEC's registration and associated transfer agent rules and regulations lies with the SEC. Accordingly, the proposal does not include a provision that corresponds to § 9.20.

IV. Community Reinvestment Act Revisions

OTS also proposes to revise its regulations implementing the Community Reinvestment Act (CRA), located at 12 CFR Part 563e. Specifically, OTS proposes to amend § 563e.11(c), which outlines the scope of the CRA regulations.

Existing § 563e.11(c) provides that the CRA regulations apply to ''all savings associations as defined in * * * this chapter.'' By contrast, the CRA regulations of the other banking agencies exempt institutions that do not perform commercial or retail banking services.[24] These institutions, including trust companies, are not in the business of providing commercial or retail banking services by extending credit to the public in the ordinary course of business. Accordingly, they are not subject to CRA requirements.

Because there were no such institutions chartered as savings associations when § 563e.11(c) was adopted, OTS did not exclude them from the scope of the CRA regulations. Recently, however, some savings and loan holding companies have acquired or created savings associations that operate solely as trust companies, or that otherwise do not provide commercial or retail banking services by extending credit to the general public in the ordinary course of business. OTS anticipates that there may be similar institutions chartered in the future.

Accordingly, OTS proposes to amend § 563e.11(c) to clarify that part 563e is not intended to apply to savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. The proposal includes several examples of such institutions, such as trust companies, clearing agents, correspondent associations, and companies that provide cash management controlled disbursement services.

V. Disposition of Existing Regulations

The following chart gives of an overview of the changes made to part 550.

[24] *See* 12 CFR 25.11(c) (OCC); 12 CFR 228.11(c) (FRB); 12 CFR 345.11(c) (FDIC).

Revised provision	Former provision	Comments
§ 550.1		Added.
§ 550.2.		
Affiliate		Added.
Applicable law	§ 550.1(g)	Significantly modified.
Custodian under a uniform gifts to minors act	§ 550.1(b)	Modified.
Fiduciary account	§ 550.1(a)	Modified.
Fiduciary capacity	§ 550.1(c) and (h)	Significantly modified.
Fiduciary officers and employees	§ 550.1(j)	Modified.
Fiduciary powers	§ 550.1(k)	Modified.
Guardian	§ 550.1(e)	Modified.
§ 550.3	§ 545.102	Modified and added.
§ 550.4	§ 550.2	Modified.
§ 550.5	§ 550.5(a)(1), (b) and (e)	Significantly modified.
§ 550.6		Added.
§ 550.7	§ 550.5(a)(2)	Significantly modified.
§ 550.8	§§ 550.5(a)(2) and 550.6	Significantly modified.
§ 550.9	§ 550.7	Significantly modified.
§ 550.10	§ 550.8	Significantly modified.
§ 550.11	§ 550.9	Significantly modified.
§ 550.12	§ 550.13	Modified.
§ 550.13	§ 550.10	Modified.
§ 550.14	§ 550.11	Modified.
§ 550.15	§ 550.4	Significantly modified.
§ 550.16	§ 550.12	Modified.
§ 550.17	§ 550.15	Modified.
§ 550.18	§ 550.14	Modified.
§ 550.19	§ 550.16	Modified.

VI. Reporting and Recordkeeping Requirements

OTS invites comment on:

Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(1) The accuracy of OTS's estimate of the burden of the proposed information collection;

(2) Ways to enhance the quality, utility, and clarity of the information to be collected;

(3) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(4) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0037), Washington, DC 20503, with copies to the Regulations and Legislation Division (1550–0037), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information requirements in this proposed rule are found in 12 CFR 550.2, 550.8, 550.9, 550.12 and 550.18. OTS requires this information for the proper supervision of Federal savings associations' fiduciary activities. The likely respondents/recordkeepers are Federal savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 10.5

Estimated number of respondents:

Applications for fiduciary powers: 13

Documentation and audit of fiduciary activities: 75

Surrender of fiduciary powers: 1

Estimated total annual reporting and recordkeeping burden: 155.5

Start up costs to respondents: 0

VII. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

IX. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal liberalizes requirements and reduces burdens for Federal savings associations that exercise fiduciary powers, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects

12 CFR Part 545

Accounting, Consumer Protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.102 [Removed]

2. Section 545.102 is removed.

3. Part 550 is revised to read as follows:

PART 550—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

Sec.
550.1 Authority and scope.
550.2 Definitions.
550.3 Exempt activities.
550.4 Approval requirements.
550.5 Administration of fiduciary powers.
550.6 General standards for the exercise of fiduciary powers.
550.7 Review of assets of fiduciary accounts.
550.8 Recordkeeping.
550.9 Audit of fiduciary activities.
550.10 Fiduciary funds awaiting investment or distribution.
550.11 Investment of fiduciary funds.
550.12 Collective investment funds.
550.13 Self-dealing and conflict of interest.
550.14 Custody of fiduciary funds.
550.15 Deposit of securities with State authorities.
550.16 Fiduciary compensation.
550.17 Receivership or voluntary liquidation.
550.18 Surrender of fiduciary powers.
550.19 Revocation of fiduciary powers.

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 550.1 Authority and scope.

This part is issued pursuant to 12 U.S.C. 1464(n). It sets forth the standards that apply to the fiduciary activities of Federal savings associations.

§ 550.2 Definitions.

For the purposes of this part:

Affiliate has the same meaning as in 12 U.S.C. 221a(b).

Applicable law means the law of a State or other jurisdiction governing a Federal savings association's fiduciary relationships, any applicable Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

Custodian under a uniform gifts to minors act means a fiduciary relationship established pursuant to a State law substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.

Fiduciary account means an account administered by a Federal savings association acting in a fiduciary capacity.

Fiduciary capacity means acting as a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the Federal savings association receives a fee for its investment advice; any capacity in which the Federal savings association possesses investment discretion on behalf of another; or any other similar capacity that OTS authorizes under 12 U.S.C. 1464(n).

Fiduciary officers and employees means all officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association's fiduciary

Fiduciary powers means the authority that the OTS permits a Federal savings association to exercise pursuant to 12 U.S.C. 1464(n). The scope of the Federal savings association's fiduciary powers depends upon the powers that the State grants to competing fiduciaries in the State in which the Federal savings association is located.

Guardian means the guardian or conservator, by whatever name used by State law, of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

Investment discretion means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of that account. A savings association that delegates its authority over investments or a savings association that receives delegated authority over investments are both deemed to have investment discretion.

§ 550.3 Exempt activities.

(a) *Activities exempted*. A Federal savings association is not subject to this part if it acts solely in the following fiduciary capacities:

(1) Trustee of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d));

(2) Trustee or custodian of a Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code (26 U.S.C. 408(a)); or

(3) Trustee of a fiduciary account that involves no active fiduciary duties provided that the applicable law authorizes the savings association to act in this capacity.

(b) *Investment authority*. A Federal savings association acting in the fiduciary capacities listed in paragraph (a) of this section may invest the funds of the fiduciary account solely in the following instruments:

(1) The Federal savings association's accounts, deposits, obligations or securities; and

(2) Such other assets as the customer may direct, provided the Federal savings association does not exercise any investment discretion and does not directly or indirectly provide any investment advice with respect to the fiduciary account.

(c) *Administration*. A Federal savings association acting in the fiduciary capacities described in paragraph (a) of this section must observe principles of sound fiduciary administration, including those related to recordkeeping and segregation of assets.

(d) *Compensation*. A Federal savings association may receive reasonable compensation for acting in any fiduciary capacity authorized by this section.

(e) *Disclosure*. Unless fiduciary investments are limited to accounts or deposits insured by the FDIC, a Federal savings association acting in the capacities described in paragraph (a) of this section must include the following language in bold type on the first page of any contract documents:

> Funds invested pursuant to this agreement are not insured by the Federal Deposit Insurance Corporation (''FDIC'') merely because the trustee or custodian is a Federal savings association the accounts of which are covered by such insurance. Only investments in the accounts of such a Federal savings association are insured by the FDIC, subject to its rules and regulations.

§ 550.4 Approval requirements.

(a) *OTS approval required*. A Federal savings association may not exercise fiduciary powers unless it obtains prior approval from the OTS under this

section. A Federal savings association may exercise only those fiduciary powers specified in the OTS approval. Unless otherwise provided in the approval, a Federal savings association may exercise fiduciary powers only from those offices listed in the application.

(b) *Application requirements.* A Federal savings association must file an application under § 516.1(c) of this chapter in order to exercise fiduciary powers through fiduciary officers and employees or through an affiliate. The application must describe the fiduciary powers that the Federal savings association or affiliate will exercise and include the additional information necessary to enable the OTS to make the determinations under paragraph (c) of this section.

(c) *Factors considered.* In reviewing an application filed under paragraph (b) of this section, the OTS will consider:

(1) The Federal savings association's financial condition;

(2) The Federal savings association's capital, and whether that capital is sufficient under the circumstances;

(3) The Federal savings association's overall performance;

(4) The fiduciary powers the Federal savings association proposes to exercise;

(5) Its proposed supervision of those powers;

(6) The availability of legal counsel;

(7) The needs of the community to be served; and

(8) Any other facts or circumstances that the OTS considers proper.

(d) *OTS action.* The Director may approve or disapprove any application filed under this section. The Regional Director is specifically authorized to approve or disapprove any application filed under this section that does not raise any significant issues of law or policy on which the OTS has not taken a formal position.

(e) *Conditions of approval.* The OTS may impose appropriate conditions to its approval of the application to ensure that the requirements of this part are met, or it may deny the application.

§ 550.5 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A Federal savings association's fiduciary activities must be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee of directors, officers or employees.

(b) *Use of personnel and facilities.* The Federal savings association may use any qualified personnel and facilities of the association or its affiliates to perform services related to the exercise of its fiduciary powers. Any department of the association or its affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* Pursuant to a written agreement, a Federal savings association exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another association or other entity, and may purchase services related to the exercise of fiduciary powers from another association or other entity.

(d) *Bond requirement.* A Federal savings association must ensure that all fiduciary officers and employees are adequately bonded.

§ 550.6 General standards for the exercise of fiduciary powers.

Each Federal savings association must exercise its fiduciary powers prudently and in compliance with applicable law. Each Federal savings association must use standards in exercising its fiduciary powers that are consistent with safety and soundness, promote sound fiduciary administration, and enable the Federal savings association to adequately monitor the condition of its fiduciary operations. The standards should be appropriate for the size and condition of the Federal savings association, the nature and scope of its fiduciary operations, and the conditions in the market in which it exercises fiduciary powers.

§ 550.7 Review of assets of fiduciary accounts.

(a) *Pre-acceptance review.* Before accepting a fiduciary account, a Federal savings association must review the prospective account to determine whether it can properly administer the account.

(b) *Initial post-acceptance review.* Upon the acceptance of a fiduciary account for which a Federal savings association has investment discretion, the association must conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.

(c) *Annual review.* At least once during every calendar year, a Federal savings association must conduct a review of all assets of each fiduciary account for which the association has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

§ 550.8 Recordkeeping.

(a) *Documentation of accounts.* A Federal savings association must maintain adequate records for all fiduciary accounts. Adequate records include, but are not limited to, documentation of the establishment and termination of each fiduciary account.

(b) *Retention of records.* A Federal savings association must retain the records described in paragraph (a) of this section for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account.

(c) *Separation of records.* A Federal savings association must ensure that the records described in paragraph (a) of this section are separate and distinct from other records of the association.

§ 550.9 Audit of fiduciary activities.

(a) *Annual audit.* At least once during each calendar year, a Federal savings association must arrange for a suitable audit of all significant fiduciary activities, under the direction of its fiduciary audit committee, unless the association adopts a continuous audit system in accordance with paragraph (b) of this section. The association must note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* In lieu of performing annual audits under paragraph (a) of this section, a Federal savings association may adopt a continuous audit system under which the association arranges for a discrete audit of each significant fiduciary activity (i.e., on an activity-by-activity basis), under the direction of its fiduciary audit committee, at an interval commensurate with the nature and risk of that activity. Certain fiduciary activities may receive audits at intervals greater or less than one year, as appropriate. An association that adopts a continuous audit system must note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

(c) *Audit standards.* (1) An audit must ascertain whether the association's internal control policies and procedures provide reasonable assurance that:

(i) Fiduciary activities are administered in accordance with applicable law;

(ii) Fiduciary assets are properly safeguarded; and

(iii) Transactions are accurately recorded in appropriate accounts in a timely manner.

(2) An audit must be conducted in accordance with generally accepted standards for attestation engagements and other standards established by the OTS.

(3) An audit may be conducted by internal auditors, external auditors or other qualified persons who are responsible only to the board of directors.

(d) *Fiduciary audit committee.* A Federal savings association's fiduciary audit committee must consist of a committee of the association's directors or an audit committee of an affiliate of the association. The committee:

(1) May not include any officers of the association or an affiliate who participate significantly in the administration of the association's fiduciary activities; and

(2) Must consist of a majority of members who are not members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the association.

§ 550.10 Fiduciary funds awaiting investment or distribution.

(a) *In general.* With respect to a fiduciary account for which a Federal savings association has investment discretion or discretion over distributions, the association may not allow funds awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. With respect to a fiduciary account for which a Federal savings association has investment discretion, the association must obtain for funds awaiting investment or distribution a rate of return that is consistent with applicable law.

(b) *Self-deposits*—(1) *In general.* A Federal savings association may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the association, unless prohibited by applicable law. To the extent that the funds are not insured by the FDIC, the association must set aside collateral as security, under the control of appropriate fiduciary officers and employees, in accordance with paragraph (b)(2) of this section. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.

(2) *Acceptable collateral.* A Federal savings association may satisfy the collateral requirement of paragraph (b)(1) of this section with any of the following:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities of the classes in which State-chartered corporate fiduciaries are permitted to invest fiduciary funds under applicable state law;

(iii) Other readily marketable securities as the OTS may determine;

(iv) Surety bonds, to the extent they provide adequate security, unless prohibited by applicable law; and

(v) Any other assets that qualify under applicable State law as appropriate security for deposits of fiduciary funds.

(c) *Affiliate deposits.* A Federal savings association, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law. A Federal savings association must set aside collateral consistent with the requirements of paragraph (b)(2) of this section, as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, unless prohibited by applicable law.

§ 550.11 Investment of fiduciary funds.

A Federal savings association must invest funds of a fiduciary account in a manner consistent with applicable law.

§ 550.12 Collective investment funds.

(a) *In general.* Where consistent with applicable law, a Federal savings association may invest assets that it holds as fiduciary in the following collective investment funds:[1]

(1) A fund maintained by the association, or by one or more affiliated depository institutions[2] exclusively for the collective investment and reinvestment of money contributed to the fund by the association, or by one or more affiliated depository institutions, in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act.

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from Federal income tax.

(i) A Federal savings association may invest assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from Federal income tax and that the association holds in its capacity as trustee in a collective investment fund established under paragraph (a)(1) or (a)(2) of this section.

(ii) A Federal savings association may invest assets of retirement, pension, profit sharing, stock bonus, or other employee benefit trusts that are exempt from Federal income tax and that the association holds in any capacity (including agent), in a collective investment fund established under this paragraph (a)(2) if the fund itself qualifies for exemption from Federal income tax.

(3) Other collective investments authorized for national banks under 12 CFR 9.18.

(b) *Requirements.* Collective investment funds held by a Federal savings association under paragraph (a) of this section must be administered in accordance with 12 CFR 9.18. Any document required to be filed with the Comptroller of the Currency under 12 CFR 9.18 must also be filed with the OTS in accordance with the filing instructions in § 516.1(c) of this chapter. The OTS may review such documents for compliance with this part and other laws and regulations.

§ 550.13 Self-dealing and conflict of interest.

(a) *Investments for fiduciary accounts*—(1) *In general.* Unless authorized by applicable law, a Federal savings association may not invest funds of a fiduciary account for which an association has investment discretion in the stock or obligations of, or in assets acquired from the association or any of its directors, officers, or employees; affiliates of the association or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association.

(2) *Additional securities investments.* If retention of stock or obligations of the association or its affiliates is consistent with applicable law, the association may:

(i) Exercise rights to purchase additional stock (or securities convertible into additional stock) when offered pro rata to stockholders; and

(ii) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a stock dividend resulting in fractional share holdings.

[1] In determining whether investing fiduciary assets in a collective investment fund is proper, the Federal savings association may consider the fund as a whole and, for example, shall not be prohibited from making that investment because any particular asset is non-income producing.

[2] A fund established pursuant to this paragraph (a)(1) that includes money contributed by entities that are affiliates as defined in § 550.2, but are not members of the same affiliated group as defined at 26 U.S.C. 1504, may fail to qualify for tax-exempt status under the Internal Revenue Code. *See* 26 U.S.C. 584.

(b) *Loans, sales, or other transfers from fiduciary accounts*—(1) *In general.* A Federal savings association may not lend, sell, or otherwise transfer assets of a fiduciary account for which the association has investment discretion to the association or any of its directors, officers, or employees, or to affiliates of the association or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association, unless:

(i) The transaction is authorized by applicable law;

(ii) Legal counsel advises the association in writing that the association has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the association, upon the sale or transfer of assets, must reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(iii) As provided in 12 CFR 9.18 for defaulted fixed-income investments; or

(iv) Required in writing by the OTS.

(2) *Loans of funds held in trust.* Notwithstanding paragraph (b)(1) of this section, a Federal savings association may not lend to any of its directors, officers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

(c) *Loans to fiduciary accounts.* A Federal savings association may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A Federal savings association may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A Federal savings association may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

§ 550.14 Custody of fiduciary funds.

(a) *Control of fiduciary assets.* A Federal savings association must place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A Federal savings association may maintain the investments of a fiduciary account off-premises, if consistent with applicable law and if the association maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A Federal savings association must keep the assets of fiduciary accounts separate from the assets of the association. A Federal savings association must keep the assets of each fiduciary account separate from all other accounts or must identify the investments as the property of a particular account, except as provided in § 550.12.

§ 550.15 Deposit of securities with State authorities.

(a) *In general.* If the law of the State in which the Federal savings association is located requires corporations acting in a fiduciary capacity to deposit securities with State authorities for the protection of private or court trusts, then a Federal savings association that acts as a private or court-appointed trustee must make such a deposit with that State. If the State authorities refuse to accept the deposit, the association must deposit the securities with the Federal Home Loan Bank of which the Federal savings association is a member, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with State authorities.

(b) *Assets held in more than one State.* If a Federal savings association administers trust assets in more than one State, the association may compute the amount of deposit required for each State on the basis of trust assets that the association administers primarily from offices located in that State.

§ 550.16 Fiduciary compensation.

(a) *Compensation of association.* If the amount of a Federal savings association's compensation for acting in a fiduciary capacity is not set or governed by applicable law, the association may charge a reasonable fee for its services.

(b) *Compensation of co-fiduciary officers and employees.* A Federal savings association may not permit any officer or employee to retain any compensation for acting as a co-fiduciary with the association in the administration of a fiduciary account, except with the specific approval of the association's board of directors.

(c) *Bequests or gifts to trust officers and employees.* A Federal savings association may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by the association's board of directors.

§ 550.17 Receivership or voluntary liquidation.

If the OTS appoints a conservator or receiver for a Federal savings association under part 558 of this chapter, or if a Federal savings association places itself in voluntary liquidation, the receiver, conservator, or liquidating agent must promptly close or transfer to a substitute fiduciary, all fiduciary accounts, in accordance with OTS instructions and the orders of the court having jurisdiction.

§ 550.18 Surrender of fiduciary powers.

(a) *Filing of board resolution.* A Federal savings association seeking to surrender its fiduciary powers must file with the OTS a certified copy of the resolution of its board of directors evidencing that intent. The resolution must be filed in accordance with § 516.1 of this chapter.

(b) *Issuance of OTS notice.* If, after appropriate investigation, the Regional Director is satisfied that the Federal savings association has been discharged from all fiduciary duties, the Regional Director will issue a written notice to the association indicating that the association is no longer authorized to exercise fiduciary powers.

(c) *Recovery of securities deposited with State authorities.* Upon issuance of the OTS written notice, the Federal savings association may recover any securities deposited under § 550.15.

§ 550.19 Revocation of fiduciary powers.

(a) *Revocation standards.* The OTS may revoke a Federal savings association's authority to exercise fiduciary powers under this part, if the OTS determines that the association:

(1) Has unlawfully or unsoundly exercised those fiduciary powers;

(2) Has failed to exercise those fiduciary powers for five consecutive years; or

(3) Has otherwise failed to comply with the requirements of this part.

(b) *Revocation procedures.* Revocation procedures are set forth in 12 U.S.C. 1464(n)(10). The hearing required under 12 U.S.C. 1464(n)(10)(B) will be conducted in accordance with part 509 of this chapter.

PART 563e—COMMUNITY REINVESTMENT

4. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c) and 2901 through 2907.

5. Section 563e.11 is amended by revising paragraph (c) to read as follows:

§ 563e.11 Authority, purposes and scope.

* * * * *

(c) *Scope*—(1) *General.* This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations.* This part does not apply to special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent associations, trust companies or clearing agents.

Dated: July 14, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–19157 Filed 7–22–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–28–AD]

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have superseded AD 85–13–03 R2, which currently requires repetitively inspecting the engine mount beams for cracks on certain Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes, and replacing any cracked beams. The earlier proposed AD would have retained the repetitive inspections initially, and would have required eventual modification of the engine mount beams upon the accumulation of a certain amount of usage time on the airplane, as terminating action for the repetitive inspections. Since publication of that proposal, the Federal Aviation Administration (FAA) has determined that the proposed action is still a valid safety issue, but that the engine mount beams should be modified for all airplanes instead of relying on repetitive inspections to detect cracks until each airplane accumulates a certain amount of usage time. This proposed AD revises the previous proposal by incorporating this change. The actions specified by the proposed AD are intended to prevent failure of the engine mount beam caused by fatigue cracks, which could result in loss of the engine with consequent loss of the airplane. Since the comment period for the original proposal has closed and the proposed AD has been changed from what was originally proposed, the FAA is allowing additional time for the public to comment.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–28–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 the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550; facsimile (316) 942–9006. This information may also be examined at the FAA at the address presented above.

FOR FURTHER INFORMATION CONTACT: David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; facsimile (316) 946–4407.

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 supplemental 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 supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90–CE–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 85–13–03 R2, Amendment 39–5147, currently requires repetitively inspecting the engine mount beams for cracks on certain Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes, and replacing any cracked beams. On August 9, 1990 (55 FR 32442), a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would supersede AD 85–13–03 R2 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM). This NPRM proposed to supersede AD 85–13–03 R2 with a new AD that would have retained the repetitive inspections initially, and would have required eventual modification of the engine mount beams upon the accumulation of a certain amount of usage time on the airplane, as terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received regarding the proposed rule and no comments were received regarding the FAA's determination of the cost to the public.

Comment Disposition

Cessna recommends a change to the NPRM to account for airplanes that may have Cessna Kit SK414–19 incorporated without Cessna Kit SK414–17 ever being incorporated. Cessna states that, as currently written, the NPRM would not require the 9,600 hour time-in-service (TIS) repetitive radiographic inspections for these airplanes.

The FAA concurs. This supplemental NPRM would propose mandatory incorporation of the two appropriate Cessna SK414–19–* kits (five different kits) and then repetitive radiographic inspections at 9,600-hour TIS intervals on all airplanes. This would assure that all airplanes are covered by the repetitive radiographic inspections.

Events Since Issuance of the NPRM

Since publication of the NPRM, the FAA has re-examined this issue and determined that the actions proposed are still valid safety issues, but that the engine mount beams should be modified at a certain time period for all airplanes instead of relying on repetitive inspections to detect cracks until each airplane accumulates a certain amount of hours TIS.

Since the comment period for the original proposal has closed and revision of the NPRM to require engine beam modification at a certain period of time for all of the affected Cessna Model 402C and 414A airplanes proposes actions that go beyond the scope of what was already proposed, the FAA is allowing additional time for the public to comment.

Relevant Service Information

The procedures to incorporate the SK414–19–* kits are included in Cessna Service Kit SK414–19B, Revised: March 4, 1986. The procedures include all instructions for incorporating Kit SK414–19–1 on all of the affected airplanes, and then incorporating one of the following, depending on the airplane model and serial number:

—Cessna Kit SK414–19–2;
—Cessna Kit SK414–19–3;
—Cessna Kit SK414–19–4; or
—Cessna Kit SK414–19–5.

The procedures to accomplish the radiographic inspections are included in the Attachment to Service Bulletin MEB85–3, Revision 1, dated August 23, 1985, as referenced in Cessna Service Bulletin MEB85–3, Revision 2, dated October 23, 1987.

The FAA's Aging Commuter Aircraft Policy

The actions proposed in this supplemental NPRM are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service 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 of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (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.

Cost Impact

The FAA estimates that 681 airplanes in the U.S. registry would be affected by the proposed AD. The proposed initial radiographic inspection would take approximately 10 workhours per airplane to accomplish at an average labor rate of $60 per hour. Based on these figures, the total cost impact of the proposed initial radiographic inspection on U.S. operators is estimated to be $408,600, or $600 per airplane. These figures do not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of the airplane.

The proposed modification would take approximately 9 workhours per airplane to accomplish at an average labor rate of approximately $60 an hour. Parts cost approximately $907 (average: varies from airplane to airplane) per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $985,407, or $1,447 per airplane. This figure is based on the presumption that no affected airplane owner/operator has incorporated the proposed modification.

Cessna has informed the FAA that kits have been sold to accommodate approximately 98 of the affected airplanes. Presuming that each set of parts is incorporated on the affected airplanes, the cost impact of the proposed modification would be reduced $141,806 from $985,407 to $843,601.

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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 85–13–03 R2, Amendment 39–5147, and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 90–CE–28–AD. Supersedes AD 85–13–03 R2, Amendment 39–5147.

Applicability: Airplanes with the following model and serial number designations, certificated in any category:

Model	Serial Numbers
402C	402C0001 through 402C0808.
414A	414A0001 through 414A1206.

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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the engine mount beam caused by fatigue cracks, which could result in loss of the engine with consequent loss of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, incorporate Cessna Kit SK414–19–1, and one of the following (as applicable) in accordance with the instructions to Service Kit SK414–19B, Revised: March 4, 1986:

(1) Cessna Kit SK414–19–2: All of the affected Models 402C and 414A airplanes that are equipped with propeller unfeathering accumulators;

(2) Cessna Kit SK414–19–3: Model 402C airplanes, serial numbers 402C0001 through 402C0468, that have Cessna Kit SK414–17 incorporated; and Model 414A airplanes, serial numbers 414A0001 through 414A0646, that have Cessna Kit SK414–17 incorporated;

(3) Cessna Kit SK414–19–4: Model 402C airplanes, serial numbers 402C0001 through 402C0468, that do not have Cessna Kit SK414–17 incorporated; and Model 414A airplanes, serial numbers 414A0001 through 414A0646, that do not have Cessna Kit SK414–17 incorporated;

(4) Cessna Kit SK414–19–5: Model 402C airplanes, serial numbers 402C0469 through 402C0808; and Model 414A airplanes, serial numbers 414A0647 through 414A1206.

(b) Within 9,600 hours TIS after the modification required by paragraph (a) of this AD, and thereafter at intervals not to exceed 9,600 hours TIS, inspect, using radiographic methods, the engine mount beams for cracks in accordance with the **ACCOMPLISHMENT INSTRUCTIONS** section of Attachment to Service Bulletin MEB85–2, Revision 1, dated August 23, 1985, as referenced in Cessna Service Bulletin MEB85–2, Revision 2, dated October 23, 1987.

(1) If any crack is found in the left side (vertical portion) of the left engine beam of either nacelle, prior to further flight, obtain a repair scheme from the manufacturer through the FAA, Wichita Aircraft Certification Office (ACO), at the address specified in paragraph (d) of this AD, and then incorporate this repair scheme.

(2) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is less than 1.75 inches, prior to further flight, stop drill each end of each crack using a 0.098-inch drill bit.

(3) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is equal to or greater than 1.75 inches, but less than 2.75 inches, prior to further flight, obtain a repair scheme from the manufacturer through the FAA, Wichita Aircraft Certification Office (ACO), at the address specified in paragraph (d) of this AD, and then incorporate this repair scheme.

(4) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is equal to or greater than 2.75 inches, prior to further flight, replace the engine beam with a part number specified in the instructions to Service Kit SK414–19B, Revised: March 4, 1986.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; 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.

Issued in Kansas City, Missouri, on July 16, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19264 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D) airplanes. The proposed AD would require lubricating the main landing gear actuator rod ends and eventually replacing these rod ends with Teflon-lined rod ends. The proposed AD is the result of in-flight separations of the rod end that attaches the actuator to the arm of the main landing gear drag brace assembly on two of the affected airplanes caused by excessive friction in the rod end bearing. The actions specified by the proposed AD are intended to prevent actuator rod end failure caused by excessive friction in the rod end bearing, which could result in the inability to lower the main landing gear or result in landing gear collapse during landing.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–13–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 the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

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. 97–CE–13–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. 97–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of in-flight separations of the rod end that attaches the actuator to the arm of the main landing gear drag brace assembly on two Raytheon 1900 series airplanes. These separations occurred in the threaded shank end of the rod end. The dry film lubricant deteriorated in the rod end, which caused excessive friction in the rod end bearing. The airplanes involved in the referenced incidents were equipped with Raytheon part number (P/N) 114–380041–11 (Frisby P/N 30150) main landing gear actuators. This condition, if not corrected in a timely manner, could result in the inability to lower the main landing gear or result in landing gear collapse during landing.

Relevant Service Information

Raytheon has issued Mandatory Service Bulletin No. 2730, Issued: November, 1996, which includes procedures for replacing the rod ends of the P/N 114–380041–11 main landing gear actuators with Teflon-lined main landing gear actuator rod ends, P/N M81935/1–8K. When the P/N M81935/1–8K main landing gear actuator rod ends are installed, the P/N 114–380041–11 main landing gear actuator is re-identified as P/N 114–380041–13.

Raytheon Safety Communiqué 1900–28, dated October 25, 1996, includes procedures for lubricating the P/N 114–380041–11 main landing gear actuators for those airplanes without Teflon-lined main landing gear actuator rod ends installed.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the service information previously referenced, the FAA has determined that AD action should be taken to prevent actuator rod end failure caused by excessive friction in the rod end bearing, which could result in the inability to lower the main landing gear or result in landing gear collapse during landing.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes) of the same type design that are equipped with at least one P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuator, the FAA is proposing an AD. The proposed AD would require lubricating the actuator rod ends of the P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuators in accordance with Raytheon Safety Communiqué 1900–128, dated October 25, 1996. The proposed AD would also require eventually replacing the rod ends of the P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuators with Teflon-lined rod ends, P/N M81935/1–8K (or FAA-approved equivalent part number). Accomplishment of this proposed replacement would be in accordance with Raytheon Mandatory Service Bulletin No. 2730, Issued: November, 1996.

Raytheon Models 1900, 1900C, and 1900D airplanes could have main landing gear actuators installed that have Parts Manufacturer Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in the proposed AD, the phrase ''or FAA-approved equivalent part number'' means that the proposed actions, if followed by a final rule, would also apply to airplanes with PMA by equivalency actuators installed.

Cost Impact

The FAA estimates that 507 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane (2 workhours per actuator with 2 actuators per airplane) to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $233 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $239,811. These figures are based on the presumption that no owner/operator of the affected airplanes has incorporated the proposed modification.

Raytheon has informed the FAA that approximately 609 actuator rod ends have been shipped from the Raytheon Aircraft Authorized Service Center. This is enough to equip approximately 300 of the affected airplanes (two main landing gear actuators per airplane). Presuming that these actuator rod ends were incorporated on the affected airplanes (two per airplane), this would reduce the cost impact of the proposed AD by $141,900 from $239,811 to $97,911.

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 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. 97–CE–13–AD.

Applicability: The following model and serial number airplanes, certificated in any category, that are equipped with at least one

part number (P/N) 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuator:

Model	Serial Numbers
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–249 and UE–252.

Note 1: The airplanes affected by this AD could have main landing gear actuators installed that have Parts Manufacturer Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in the proposed AD, the phrase ''or FAA-approved equivalent part number'' means that this AD applies to airplanes with PMA by equivalency main landing gear actuators installed.

Note 2: 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 (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 in the body of this AD, unless already accomplished.

To prevent actuator rod end failure caused by excessive friction in the rod end bearing, which could result in the inability to lower the main landing gear or result in landing gear collapse during landing, accomplish the following:

(a) Upon accumulating 1,200 hours time-in-service (TIS) on each P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuator or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, lubricate the actuator rod ends in accordance with Raythe on Safety Communication 1900–28, dated October 25, 1996.

(1) This lubrication is not needed on airplanes that have P/N M81935/1–8K (or FAA-approved equivalent part number) main landing gear actuator rod ends installed, as required by paragraph (b) of this AD.

(2) Installing the P/N M81935/1–8K (or FAA-approved equivalent part number) main landing gear actuator rod ends may be accomplished at any time prior to the next 600 hours TIS, at which time they must be installed (see paragraph (b) of this AD).

(b) Within the next 600 hours TIS after the effective date of this AD, install Teflon-lined main landing gear actuator rod ends, P/N M81935/1–8K (or FAA-approved equivalent part number), in accordance with the **ACCOMPLISHMENT INSTRUCTIONS** section of Raytheon Mandatory Service Bulletin No. 2730, Issued: November, 1996.

(c) As of the effective date of this AD, no person may install a P/N 114–380041–11(or FAA-approved equivalent part number) main landing gear actuator without replacing the rod ends with P/N M81935/1–8K (or FAA-approved equivalent part number). Installing these Teflon-lined rod ends re-identifies the main landing gear actuator as P/N 114–380041–13.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; 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.

Issued in Kansas City, Missouri, on July 16, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19263 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 970404078–7078–01]

RIN 0648–AE41

Proposed Thunder Bay National Marine Sanctuary

AGENCY: Santuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Extension of comment period; notice of public hearings.

SUMMARY: The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (SRD) issued a proposed rule on June 23, 1997 (62 FR 33768) to designate an approximately 808 square-mile area of Great Lakes waters on Lake Huron, Michigan, over and surrounding Thunder Bay, and the submerged lands thereunder, off the northeastern coast of the State of Michigan as a National Marine Sanctuary. The public comment period on this proposal was to close on September 22, 1997. Representatives of a variety of interests in the communities adjoining the proposal area are forming a group to work with NOAA and the State of Michigan on completion of the sanctuary designation process. Those communities have requested additional time to review the proposal and to develop recommendations for NOAA and the State. Thus, this notice extends the comment period to October 31, 1997.

In compliance with section 304(a)(3) of the National Marine Sanctuaries Act (Pub. L. 104–283), NOAA will also conduct public hearings in Alcona, Alpena and Presque Isle Counties, Michigan, to receive the views of interested parties on the proposed designation and on the Draft Environmental Impact Statement/Management Plan (DEIS/MP) for the Proposed Thunder Bay National Marine Sanctuary. The views expressed at these hearings, as well as written comments received on the DEIS/MP, will be considered by NOAA and the State of Michigan in determining whether to proceed with preparation of the Final Environmental Impact Statement/Management Plan.

Copies of the DEIS/MP are available at the following regional distribution points, or upon request to the Sanctuaries and Reserves Division (SRD):

Presque Isle County Clerk's Office, Presque Isle County Building, 151 East Huron, Rogers City, MI 49779, (517) 734–3288

Alpena County Clerk's Office, Alpena County Courthouse, 729 West Chisholm Street, Alpena, MI 49707

Alcona County Clerk's Office, Alcona County Building, 106 Fifth Street, Harrisville, MI 48740

DATES: Comments on the DEIS/MP must be received by October 31, 1997. The public hearings will be held on the following dates, at the following locations: September 8, 1997, at 7:00 p.m. at the Court Room, Alcona County Building, 106 Fifth Street, Harrisville, MI; September 9, 1997, at 7:00 p.m. at the Granum Theater, Alpena

Community College, 666 Johnson Street, Ctr. #107, Alpena, MI; and September 10, 1997, at 7:00 p.m. at the Circuit Court Room, Presque Isle County Building, 151 East Huron, Rogers City, MI. All interested persons are invited to attend.

ADDRESSES: Written comments should be sent to Stephanie R. Thornton, Chief, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 11th Floor, Silver Spring, Maryland 20910. Comments will be available for public inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Karen Brubeck at (616) 526–8434 or Sherrard Foster at (301) 713–3137, ext. 151. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.)

Dated: July 17, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–19356 Filed 7–22–97; 8:45 am]

BILLING CODE 3510–08–M

Notices

Federal Register

Vol. 62, No. 141

Wednesday, July 23, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–070–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of information collection in support of regulations intended to prevent the introduction of foreign plant pests into the United States.

DATES: Comments on this notice must be received by September 22, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–070–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–070–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding foreign quarantine notices, contact Mr. Peter Grosser, Senior Operations Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 139, Riverdale, MD 20737-1236, (301) 734–8295; or e-mail: pgrosser@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, Agency Support Service Specialist, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Foreign Quarantine Notices.

OMB Number: 0579–0049.

Type of Request: Extension of an approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the introduction of foreign plant pests into the United States. Implementing this mission often requires us to collect information from a variety of individuals, both within and outside of the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, fruits, vegetables, roots, bulbs, seeds, and other plant products.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

For example, many plants or plant products may not be imported until the person wishing to import them receives a permit from us. The person wishing to import these items must first fill out a permit application.

We consider the permit application process extremely important, since the information on the application enables us to determine whether the items for import represent a potential pest threat to U.S. agriculture.

Under certain circumstances we also require importers to supply us with other types of information. We require, for example, that containers used to import various plants or plant products be marked in a certain way so that our inspectors can accurately identify them and match them to their accompanying documentation.

We require that certain shipments be accompanied by a phytosanitary inspection certificate, which is a document completed by plant health officials in the originating country. This certificate attests to the plant pest condition of the shipment at the time it was inspected in the originating country. We use this important information as a guide in determining the intensity of the inspection we must conduct when the shipment arrives in the United States.

This and other information we collect is vital to helping us ensure that imported plants and plant products do not harbor plant pests that, if introduced into the United States, could cause millions of dollars in damage to U.S. agriculture.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .4 hours per response.

Respondents: Importers and foreign plant health protection authorities.

Estimated Number of Respondents: 96,028.

Estimated Number of Responses per Respondent: 2.6.

Estimated Annual Number of Responses: 249,672.

Estimated Total Annual Burden on Respondents: 99,869 hours.

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.

Done in Washington, DC, this 17th day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–19363 Filed 7–22–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–064–1]

Boll Weevil Control Program; Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared two environmental assessments and findings of no significant impact for proposed programs to eradicate the boll weevil in Mississippi and in the Red River Valley area of Arkansas and Louisiana. The environmental assessments provide the basis for our conclusion that the implementation of the proposed boll weevil eradication programs in Mississippi and in the Red River Valley area of Arkansas and Louisiana will not have a significant impact on the quality of the human environment.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Grefenstette, Senior Operations Officer, National Boll Weevil Eradication Program, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236, (301) 734–8676. Copies of the environmental assessments and findings of no significant impact may be obtained by contacting Mr. Grefenstette.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 7 U.S.C. 147a, 148, and 450, the Secretary of Agriculture is authorized to cooperate with the States and certain other organizations and individuals to control and eradicate plant pests.

The boll weevil (*Anthonomus grandis Boheman*) is a destructive pest of cotton which causes annual economic losses to the agricultural industry and consumers. Since its introduction in southern Texas in the late 1800's, the boll weevil has spread across the area of the United States known as the Cotton Belt. Since the early 1950's, the United States agricultural community has acknowledged the need for a beltwide strategy for controlling the boll weevil. Since the first pilot program in 1971, programs implemented in an incremental fashion have been successful in eradicating the boll weevil from over 3.5 million acres in major areas of the Cotton Belt.

On December 24, 1991, we published in the **Federal Register** (56 FR 66615–66616, Docket No. 91–173) a notice announcing the availability of a final environmental impact statement for the National Boll Weevil Cooperative Control Program (national program). This comprehensive programmatic environmental impact statement evaluated the impacts of the national program to eradicate boll weevil.

The national program relies on integrated control methods, including the use of chemicals, on cotton crops. Therefore, as the national program expands to include new areas, the Animal and Plant Health Inspection Service (APHIS) prepares site specific environmental assessments to analyze the potential effects of eradication program alternatives and actions on the quality of the human environment in the local area of the proposed eradication program.

APHIS, in cooperation with the other Federal and State agencies, cotton growers, and cotton grower organizations in Arkansas, Louisiana, and Mississippi, proposes to add Mississippi and the Red River Valley area of Arkansas and Louisiana to the national program to eradicate boll weevil from cotton fields in these areas.

APHIS has prepared site specific environmental assessments for the proposed eradication activities in Mississippi and in the Red River Valley area of Arkansas and Louisiana. The analyses for these sites focused on potential effects of chemical pesticides and potential outbreaks of secondary pests. In addition to the routine operational procedures and mitigation measures that are followed in all areas of the national program, these site specific environmental assessments recommend additional protective measures to further reduce the potential for adverse environmental effects.

These site specific environmental assessments and the programmatic environmental impact statement provide the basis for our conclusion that the implementation of the proposed boll weevil eradication programs in Mississippi and in the Red River Valley area of Arkansas and Louisiana will not have a significant impact on the quality of the human environment in either area.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 17th day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–19362 Filed 7–22–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request, Food Stamp Program Form FCS–521, Food Coupon Deposit Document

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection. The Food Stamp Act of 1977 (the Act) requires that all verified and encoded redemption certificates accepted by insured financial institutions from authorized retail food stores shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the accompanying Food Coupon Deposit Document (Form FCS–521). Requirements in the Food Stamp Regulations are the basis for the information collected on Form FCS–521, Food Coupon Deposit Document.

DATES: Written comments must be submitted on or before September 22, 1997.

ADDRESSES: 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 has 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; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Suzanne M. Fecteau, Chief, Redemption Management Branch, Food Stamp Program, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. 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.

FOR FURTHER INFORMATION: Requests for additional information or copies of the information collection form and instructions should be directed to Suzanne M. Fecteau, (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Title: Food Coupon Deposit Document.

OMB Number: 0584–0314.

Expiration Date: 9/30/97.

Type of Request: Extension of a currently approved collection for which approval expires on September 30, 1997.

Abstract: The Food and Consumer Service (FCS) of the U.S. Department of Agriculture is the Federal Agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended, requires that the Agency provide for the redemption, through financial institutions, of food coupons accepted by retail food stores from program participants. Section 278.5 of the Food Stamp Program regulations governs financial institution and Federal Reserve participation in the food coupon redemption process. Form FCS–521, Food Coupon Deposit Document (FCDD) is required to be used by all financial institutions when they deposit food coupons at Federal Reserve Banks. Without the FCDD, no vehicle would exist for financial institutions, Federal Reserve Banks, and the FCS to track deposits of food coupons.

Affected Public: Federal Agencies or employees, and businesses or other-for-profit financial institutions.

Estimated Number of Respondents: 10,000.

Estimated Annual Number of Responses per Respondent: 37.8.

Estimated Total Annual Responses: 378,000.

Estimate of Burden: Estimated to average .006944 hours per response.

Estimated Total Annual Burden: 3,675 hours.

Dated: July 10, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–19276 Filed 7–22–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent to Prepare an Environmental Impact Statement; Finger Mountain Timber Sale(s), Sitka Ranger District, Tongass National Forest, Chatham Area, Sitka, Alaska; Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement; Revision.

SUMMARY: The Department of Agriculture, Forest Service has revised the proposed action for the Finger Mountain Project described in the notice of intent published June 30, 1997 (**Federal Register**: Volume 62, Number 125, Pages 35145–35146). The revised proposed action includes: (1) Timber harvest and subsequent regeneration on approximately 2,300 acres of forested land resulting in the production of approximately 50 million board feet of sawlog and utility timber. (2) Construction of approximately 40 miles of permanent road, 14 miles of temporary road, and reconstruction of approximately 14 miles of existing road. (3) Construction of two new log transfer facilities and reconstruction of one existing log transfer facility. This proposed action is one alternative for meeting for purpose and need for the project.

The Finger Mountain Project Area is now expected to provide between 10 and 70 million board feet of timber to the timber industry in one or more timber sales. The actual range of alternatives considered in the Environmental Impact Statement will be determined during analysis.

The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action.

No other revisions are made to the original notice of intent published June 30, 1997.

DATES: Comments concerning the scope of the analysis should be received in writing by August 15, 1997.

ADDRESSES: Send written comments to Finger Mountain Planning Team, Sitka Ranger District, 204 Siginaka Way, Sitka, AK 99835.

FOR FURTHER INFORMATION CONTACT: Lisa Winn, Team Leader, Sitka Ranger District, 204 Siginaka Way, Sitka, AK 99835, phone (907) 747–6671, fax (907) 747–4331.

SUPPLEMENTARY INFORMATION: See the notice of intent published June 30, 1997 (**Federal Register**: Volume 62, Number 125, Pages 35145–35146) for supplementary information regarding this project.

Dated: July 15, 1997.

Gary A. Morrison,

Forest Supervisor.

[FR Doc. 97–19361 Filed 7–22–97; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on August 7, 1997, at the Plaza, 1001 County Line Road, Jackson, Mississippi 39211. The purpose of the meeting is to discuss draft report and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–19273 Filed 7–22–97; 8:45 am]

BILLING CODE 6335–01–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on

Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 8:00 p.m. on August 13, 1997, at the Lamplighter Inn, 1772 South Glenstone, Springfield, Missouri 65804. The purpose of the meeting is to hold a community forum on ''How to File a Civil Rights Complaint,'' and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–19271 Filed 7–22–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 5:00 p.m. and adjourn at 7:00 p.m. on August 21, 1997, at the Cornhusker Hotel, 333 South 13th Street, Lincoln, Nebraska 68508. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–19274 Filed 7–22–97; 8:45 am]

BILLING CODE 6335–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 95–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to UPA, 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 UPA, Inc.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. No. 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 (1997). Pursuant to this authority, a certificate of review was issued on August 18, 1995 to UPA, 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, Section 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 (Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On February 12, 1997, the Department of Commerce sent to UPA, Inc. a letter containing annual report questions with a reminder that its annual report was due by October 2, 1996. Additional reminder letters were sent on April 11, 1997 and on May 2, 1997. The Department has received no written response from UPA, Inc. to any of these letters.

On May 27, 1997, and in accordance with Section 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 UPA, 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 UPA, Inc. thirty days to respond was published in the **Federal Register** on June 4, 1997 at 62 FR 30569. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of UPA, 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 UPA, Inc. for its failure to file an annual report. The Department has sent a letter, dated July 9, 1997, to notify UPA, 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: July 9, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–19355 Filed 7–22–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of Michigan, Connecticut, South Carolina, and Maryland Coastal Zone Management Programs.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of

financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits

The Michigan Coastal Zone Management Program site visit will be from September 8–12, 1997. One public meeting will be held during the week. This meeting is scheduled for 7:00 P.M., Tuesday, September 9, 1997, at the Radisson Hotel, 111 North Grand River Avenue, Lansing, Michigan.

The Connecticut Coastal Zone Management Program site visit will be from September 15–19, 1997. A public meeting will be held during the week. This meeting is scheduled for 7:30 P.M., on Wednesday, September 17, 1997, at the DEP Marine District Headquarters, 333 Ferry Road, Old Lyme, Connecticut.

The South Carolina Coastal Zone Management Program site visit will be from September 8–12, 1997. Three public meetings will be held during the week. The public meetings will be held on: Tuesday, September 9, 1997, from 7:00–9:00 p.m., at the South Carolina Department of Natural Resources Marine Resources Research Institute Auditorium, 217 Ft. Johnson Road, Charleston, South Carolina; Wednesday, September 10, 1997, from 7:00–9:00 p.m., at the Santee Cooper Authority Building, 18th Avenue North and Oak Street, Myrtle Beach, South Carolina; and on Thursday, September 11, 1997, from 7:00–9:00 p.m., at the Beaufort Technical Education College, Building 12, Room 107, 921 Ribaut Road, Beaufort, South Carolina.

The Maryland Coastal Zone Management Program site visit will be from September 22–26, 1997. A public meeting will be held during the week. This meeting is scheduled for 7:00 P.M., on Monday, September 22, 1997, at the Maryland Coastal Bays Office, 9609 Decatur Highway, Berlin, Maryland.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 17, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 97–19318 Filed 7–22–97; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

July 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs announcing the establishment of a limit.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memeorandum of Understanding (MOU) dated June 20, 1997, the Governments of the United States and Nepal agreed, pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), to establish limits for Category 363 (cotton terry cloth towels) for twelve-month periods beginning on January 1, 1997 and extending through the remaining years of the bilateral agreement.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 363 for the period January 1, 1997 through December 31, 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 26478, published on May 14, 1997; and 61 FR 65197, published on December 11, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the June 20, 1997 MOU, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels, effective on July 24, 1997, the directive issued to you on May 14, 1997, by the Chairman, Committee for the Implementation of Textile Agreements (CITA), which directed you to count imports for consumption and withdrawals from warehouse for consumption of textile products in Category 363, produced or manufactured in Nepal and exported during the period April 23, 1997 through April 22, 1998. Import charges already made to Category 363 shall be retained and charged to the limit established in this directive for Category 363.

This directive amends, but does not cancel, the directive issued to you on December 5, 1996, by the Chairman of CITA. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 24, 1997, you are directed, pursuant to a Memorandum of Understanding dated June 20, 1997, between the Governments of the United States and Nepal, to establish a limit for Category 363 for the period January 1, 1997 through

December 31, 1997 at a level of 6,500,000 numbers [1].

For the import period January 1, 1997 through April 22, 1997, you are directed to charge 1,323,000 numbers to the limit established for Category 363. Additional charges will be provided as they become available.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–19329 Filed 7–22–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Romania

July 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202 927–5850). For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 4034, published on January 28, 1997.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the May 7, 1997 MOU, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 24, 1997, you are directed to adjust the limits for the following categories, as provided for by the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Adjusted twelve-month limit [1]
410	86,594 dozen.
433/434	11,034 dozen.
435	11,575 dozen.
442	13,179 dozen.
443	97,279 numbers.
444	52,056 numbers.
447/448	29,163 dozen.
647	101,467 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–19328 Filed 7–22–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Women's Health Care in the Field Environment; OMB Number 0720–(to be determined).

Type of Request: New Collection.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 63.

Needs and Uses: This collection of information will be used by The Ohio State University, College of Nursing, Military Nursing Research Center (MNRC) and the Department of Defense to determine the scope of the problem of gynecologic infections experienced by military women and to demonstrate the need for self-care alternatives to current health care resources for women in austere military environments such as field duty, deployment to a second or third world country, combat/combat support situations, or sea duty. There are no existing databases that can provide this type of information, but it is an extremely important issue for many military women. The beneficiaries of the results of this study will be military women who serve in the active and reserve components of the Armed Forces.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 17, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19343 Filed 7–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Assistance to Local Educational Agencies (LEAs)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a Program for Providing Financial Assistance to LEAs.

SUMMARY: Pursuant to Section 386 of Public Law 102–484, as amended by Section 373 of Public Law 103–160, the ''National Defense Authorization Act for Fiscal Year 1994,'' and Section 1074 of Public Law 104–106, the ''National Defense Authorization Act for Fiscal Year 1996,'' and pursuant to Section 372 of Public Law 104–201, the ''National Defense Authorization Act for Fiscal Year 1997,'' September 23, 1996, notice is hereby given of a program to provide financial assistance to eligible LEAs that are impacted by the presence of military dependent children or by the base closure process.

DATES: July 23, 1997.

ADDRESSES: Deputy Assistant Secretary of Defense (Personnel Support, Families & Education), room 3A280, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Linda L. Renz or Mr. Norman R. Heitzman, Domestic Dependent Elementary and Secondary Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635; telephone (703) 696–4354 or 4361; facsimile number (703) 696–8920.

SUPPLEMENTARY INFORMATION:

Program Announcement

During fiscal year (FY) 1997, the Department of Defense (DoD) is authorized 35 million dollars to assist eligible Local Education Agencies (LEAs) affected by the impact of military dependent students or by reductions in the size of the Armed Forces. DoD shall rely on data from the Department of Education for the purpose of determining eligibility of an LEA.

Pursuant to subsection 386(c) of Public Law 102–484, as amended, and subsection 372(a)(1) of Public Law 104–484, 30 million dollars will be provided to eligible LEAs for educational agency assistance if without such assistance, that LEA would be unable to provide its students with a level of education equivalent to the minimum available in other LEAs in the same state, and

(1) At least 20 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of that LEA in that fiscal year are military dependent students counted under subsection 8003(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1));

(2) there has been a significant increase, as determined by the Secretary, in the number of military dependent students in average daily attendance in the LEA's schools as a result of relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations: or

(3) an LEA is a successor of one or more LEAs that was eligible for payments in Fiscal Year 1992 under DoD Directive 1342.18, and satisfies one of the two previously listed criteria.

Pursuant to subsection 386(d) of Public Law 102–484, as amended, and subsection 372(a)(2) of Public Law 104–201, 5 million dollars is authorized for the Secretary to make educational agency payments to LEAs that are impacted by reductions in the size of the Armed Forces. Eligible LEAs are those that during the period between the end of the school year preceding the fiscal year for which the payments are authorized and the beginning of the school year immediately preceding that school year, had an overall reduction of not less than 20 percent of military dependent students, as a result of closure or realignment of military installations.

Any funds provided under this notice shall be available only for eligible LEAs who (1) Exercise our diligence in obtaining State and other financial assistance; (2) are treated the same as other LEAs under State law for the purpose of receiving State aid for public education; and (3) file with the Assistant Secretary of Defense for (Force Management Policy), a letter of application (see Sample Letter at the end of this notice) and a copy of an independently audited financial report on the LEA for the preceding fiscal year.

Applications for financial assistance in response to this notice must be received no later than August 13, 1997.

Definition

For the purposes of this program, the following definitions are applicable: (a) Applicant. Any LEA requesting assistance under this notice. (b) Local Education Agency (LEA). A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school. (c) Military Dependent Student. A student that is a dependent child of a member of the Armed Forces or a dependent child of a civilian employee of the Department of Defense.

Amount of Assistance

An applicant requesting assistance under this notice shall submit a letter of application (see sample letter at end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY, requesting a DoD contribution and assuring the ASD(FMP) that the LEA has applied for, has received or shall receive all financial assistance from other sources for which it is qualified. Letters of application must be addressed as follows: Assistant Secretary of Defense (Force Management Policy), Attn: DoD Domestic Dependent Elementary and Secondary Schools (DDESS), 4040 North Fairfax Drive, Arlington VA 22203–1635.

The applicant shall also file a copy of the letter of application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the above address) by August 13, 1997. Such comments shall be considered when applications are reviewed by the Office of the Secretary of Defense. The LEA's application and all required supporting information must reach the ASD(FMP) no later than August 13, 1997. No assurances of confidentiality are being made, other than the assurance that the audits will not be released.

This information collection has been approved as OMB Control Number 0704–0389, with an expiration date of June 30, 2000. The public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments

regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operation and Reports (0704–0389), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

Sample Letter of Application for Financial Assistance

Assistant Secretary of Defense (Force Management Policy), Attn: DoD Domestic Dependent Elementary, and Secondary Schools (DDESS), 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Dear Mr. Assistant Secretary: Pursuant to this ''Notice of a Program for Providing Financial Assistance to LEAs,'' Federal Register Vol. _____, No. _____, dated_____, 1997, the (name of the local educational agency (LEA)) requests financial assistance for the LEA for school year 1996–1997. We certify that the LEA has applied for financial assistance from all sources, including the State/Commonwealth of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military dependent students, as in the ''Notice of a Program for Providing Financial Assistance to LEAs.'' Enclosed find a copy of our independent audit ''(Title)'' prepared by (name of firm or agency). We have submitted a complete and timely application for Section 3 impact aid assistance to the Secretary of Education and have submitted applications for all other assistance for which the LEA may be entitled. This LEA is treated the same as other LEAs under state law for the purpose of state aid for public education. A copy of this letter, with the above supporting information, is being submitted to the State educational agency.

Sincerely,

(Authorized LEA Official)

Dated: July 17, 1997.

Patricia L. Topping,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19342 Filed 7–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Investigative Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities, and the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher S. Koehle, Assistant Director for Executive Personnel, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 697–8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB; specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1997.

Office of the Secretary of Defense

Chairman

Robert R. Soule

Members and Alternates

Ralph Alewine
Clifford Bernath
Thomas Bozek
Jennifer Buck
Richard Burke
Jennifer Carrano
Gary Christle
Charles Cook
Julie Cruz-Aviles
Bob Dorosz
Bob Drake
Sheila Dryden
Thomas F. Garnett
Stanley Gontarek
Doug Hansen
Michael L. Ioffredo
Bob Jackson
Clarence Kitchens
Gil Klinger
Paul Koffsky
Paul Kozemchak
William Lowry
Jack Mester
Ray Miller
Timothy Morgan
James Reardon
Vincent Roske
Michael Thibault
Mary Tompkey
Austin Yamada

Dated: July 17, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19344 Filed 7–22–97; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Exclusively License U.S. Army Invention

AGENCY: U.S. Army.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the intent to exclusively or partially exclusively license a U.S. Army invention. The invention intended to be licensed has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army, as represented by the Army Research Laboratory, intends to exclusively or partially exclusively license this invention to Kim Technologies International, Inc., a minority owned small business which is interested in manufacturing, using, and/or selling devices or processes involved in this invention.

CECOM 5257—Fabrication of Electrodes in Batteries and Electrochemical Capacitors.

CECOM 5262—Pulsed Laser Deposition of Amorphous Metal Oxides.

CECOM 5276—Novel Nonaqueous Electrolyte Systems for Elect.

FOR FURTHER INFORMATION CONTACT: For further information or to make a written objection, please contact Mr. Michael Zelenka, Esq. Chief, Intellectual Property Division, Attention: AMSEL–LG–L, U.S. Army Communication-Electronics Command, Ft. Monmouth, NJ 07703–5000, phone (908) 532–4112, or fax (908) 389–3396.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–19323 Filed 7–22–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Environmental Analysis of Army Actions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent; withdrawal.

SUMMARY: The Army Corps of Engineers published a Notice of Intent in the **Federal Register** on June 17, 1993 (Vol. 58, No. 115, pp. 33436–7) to prepare a supplemental draft Environmental Impact Statement (sdEIS) for the proposed Adam's Rib Recreation Area in Eagle County, Colorado. By written request dated May 9, 1997, the applicant withdrew his application for a Section 404 permit. Therefore, the sdEIS will not be completed.

ADDRESSES: Army Corps of Engineers-Sacramento District, ATTN: CESPK–CO–R (Larry Vinzant, Project Manager), 1325 J Street, room 1480, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Larry Vinzant, (916) 557–5263.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–19332 Filed 7–22–97; 8:45 am]

BILLING CODE 3710–E2–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for Dare County Beaches, Dare County, North Carolina

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Dare County beaches study area is located on the northern coast of North Carolina about 40 miles south of the North Carolina-Virginia state line. This area is at risk from hurricanes and winter storms which regularly damage or destroy structures near the shoreline. The proposed shoreline protection project involves the placement of berm and, where necessary, establishment of a dune line. Ongoing feasibility studies have identified potential project areas that cover a total shoreline distance of about 10 miles located north of Oregon Inlet.

FOR FURTHER INFORMATION CONTACT: Questions about the DEIS can be answered by: Mr. Charles Wilson, Environmental Resources Section, at the U.S. Army Engineer District, Wilmington, P.O. Box 1890, Wilmington, North Carolina 28402–1890; telephone: (910) 251–4746.

SUPPLEMENTARY INFORMATION: The proposed hurricane and storm damage reduction project would consist of a berm or combination of berm and dune, to be constructed along various reaches of the oceanfront within the study area. The selection of final project features and reaches for inclusion in the recommended plan will be based on a maximization of net project benefits. The sand volume required for project construction is expected to range from about 2.5 to 10.5 million cubic yards. Depending on the dredge plant utilized and dredging windows, construction time is estimated to be about 2 years or less. Potential offshore sources of borrow material for the project have been identified. Maintenance of project reaches are expected to require periodic renourishment every 3 to 5 years; however, renourishment of portions of the project area could be required more frequently. The periodic renourishment volume is expected to be 1 to 4 million cubic years.

Alternatives to be evaluated include variations of project dimensions/features and no action. Alternative methods of beach nourishment and dredging of offshore borrow areas will also be evaluated including the use of an ocean-certified hydraulic pipeline or hopper dredge.

All private interests and Federal, State, and local agencies having an interest in the project are hereby notified and are invited to comment. A scoping letter requesting input to the study will be sent to all known interested parties concurrent with publication of this NOI. Comments received will be used to assist in identifying potential impacts to the quality of the environment and preparation of the DEIS. No formal scoping meetings are planned at this time, but based on the responses received, scoping meetings may be held with specific agencies or individuals as required.

A significant issue to be addressed in the DEIS is a determination of the most appropriate time of year for dredging and beach nourishment. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all applicable Federal and State laws and Executive Orders.

The Draft EIS is currently scheduled for distribution to the public in August 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–19334 Filed 7–22–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare an Environmental Impact Statement (EIS) for the Toledo Harbor, Ohio, Long Term Dredged Material Management Plan Within the Context of the Maumee River Watershed Sediment Management Strategy (ER 200–2–2)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent is being published in accordance with ER 200–2–2, Procedures for Implementing NEPA. The potential project may be considered a major Federal action, of considerable Federal expense but generating considerable long term savings, and/or of considerable environmental and/or public interest.

The proposed project will involve implementation of measures shown to be feasible from the engineering and economic perspectives and acceptable from the environmental and social perspectives that will better manage water and sediment quality and loading conditions in the Maumee River Watershed, and dredging and disposal of dredged material from Toledo Harbor, Ohio. Component measures would include those pertaining to: Pollution reduction, sediment load reduction, dredging, open lake disposal, confined disposal facility (CDF) disposal and management, and beneficial use of dredged material.

A feasibility study is currently being conducted by the Toledo Harbor Planning Group in order to assess and evaluate various alternative component measures. The Toledo Harbor Planning Group consists of several Federal, State, and local agencies and interests. The study is being conducted under 33 CFR 337.9 (part 200 to end), revised July 1, 1991, 33 CFR 233 and 40 CFR 1501.7, and Section 356 of the Water Resources Development Act of 1992. An initial scoping meeting for this project was conducted in May of 1992. Subsequent meetings have followed. Supplemental scoping letters were coordinated with agencies and interests known to have an

interest in the study in November of 1993.

Significant issues identified include those items identified in the previous paragraph. A reconnaissance (interim) report was completed and coordinated in February of 1996. Since Federal, State, and local interests have been involved with initiation of the study, and adequate coordination is already being conducted, no new formal initial scoping meeting is scheduled. Additional scoping input from potentially affected interests is invited by this notice. It is expected that a Draft Feasibility Report and Draft Environmental Impact Statement will be made available to the public about April 1999. When the Draft reports are completed, the Draft Environmental Impact Statement will be filed with the U.S. Environmental Protection Agency and coordinated and reviewed under Federal Planning and the National Environmental Policy Act procedures.

FOR FURTHER INFORMATION CONTACT: Tod Smith, 716–879–4175, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Section, 1776 Niagara Street, Buffalo, New York 14207–3199.

SUPPLEMENTARY INFORMATION: None.

Dated: June 29, 1997.

Michael J. Conrad, Jr.,

Lieutenant Colonel, U.S. Army Commanding.

[FR Doc. 97–19333 Filed 7–22–97; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Subject Area Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: July 30, 1997.

TIME: 8:30 A.M.—5:00 P.M. (closed) (et).

LOCATION: Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The public is being given less than 15 days notice of this closed meeting because of summer schedules which made it difficult to find a date mutually agreeable to a quorum of the Committee.

On July 30, 1997 between the hours of 8:30 A.M. to 5:00 P.M. the Subject Area Committee of the National Assessment Governing Board will hold a closed meeting. The Committee will be reviewing items for the 1998 Civics assessment. This meeting must be conducted in closed session because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)B of section 552b(c) of Title 5 U.S.C.

Summaries of the activities of this closed meeting and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 A.M. to 5:00 P.M.

Roy Truby,

Executive Director.

[FR Doc. 97–19241 Filed 7–22–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–628–000]

Algonquin Gas Transmission Company; Notice of Request under Blanket Authorization

July 17, 1997.

Take notice that on July 10, 1997, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP97–628–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct a delivery point in New York, under Algonquin's blanket certificate issued in Docket No. CP87–317–000 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.

Algonquin proposes to construct and install two 4-inch tap valves and 4-inch check valves on Algonquin's existing 26-inch mainline and 30-inch loop, at approximate Mile Post 99.1 in Somers, New York. ConEd will install, or cause to be installed approximately 900 feet of 3-inch pipeline which will extend from the meter station to the taps, and the facilities to house and support Algonquin's meter and EGM equipment. Algonquin states that it will provide natural gas deliveries to Consolidated Edison Company of New York, Inc. (ConEd), a local distribution company and existing Algonquin customer.

ConEd will reimburse Algonquin for 100% of the costs and expenses that it will incur for installing the facilities. Such costs and expenses are estimated to be approximately $212,000, excluding an allowance for federal income taxes.

Algonquin states that the installation of the delivery point will have no effect on its peak day or annual deliveries, that its existing tariff does not prohibit the additional point, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

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 § 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. 97–19279 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–171–008]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 11, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, pro forma tariff sheet Nos. 5, 7, 8, 10, 11, 149A, 161A.1, 161A.2, 161A. 3 and 162 in compliance with a Commission June 26, 1997 order.

ANR states that these tariff sheets are being filed to comply with the Commission's requirement in its June 26 order that ANR state its daily rates for capacity release in dollars and cents, as opposed to the approach proposed by ANR of setting forth in its tariff the methodology for converting rates to daily amounts.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commissions 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. 97–19298 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3390–000]

Central Maine Power Company; Notice of Filing

July 3, 1997.

Take notice that on June 20, 1997, Central Maine Power Company (Central Maine) tendered for filing with the Federal Energy Regulatory Commission its Wholesale Market Tariff, FERC Electric Tariff. Under the tariff, Central Maine may enter into service agreements for the sale at wholesale of electric capacity and/or energy at negotiated rates and may conduct transactions pursuant to such service agreements.

Central Maine requests an effective of August 9, 1997, or the date of approval by the Commission, whichever comes earlier.

Central Maine has served copies of the filing upon the Maine Public Utilities Commission and the Maine Office of the Public Advocate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before July 17, 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. 97–19285 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–167–006]

Columbia Gas Transmission Corp.; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 9, 1997, Columbia Gas Transmission Corporation (Columbia) tendered as for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 309

Columbia states that on April 2, 1997, in the above referenced dockets, it submitted Sheet No. 309 but it was incorrectly paginated. By Errata Notice dated May 30, 1997, issued in its Rehearing Order in Columbia's GISB proceedings, the Commission directed Columbia to conform the electronically filed version of Sheet 309 with the paper copy. It was later determined that incorrect pagination had been used on both the electronically filed copy and the paper copy. This filing is intended to correct those errors. The instant filing is submitted in compliance with the Errata Notice to implement the tariff sheet effective June 1, 1997.

Any person desiring to be heard or to protest this filing should file a Motion to Intervene with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protests as 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. 97–19297 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–389–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 14, 1997, Columbia Gas Transmission Corporation (Columbia Transmission) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing an effective date of July 7, 1997:

Substitute Fifth Revised Sheet No. 281
Substitute Sixth Revised Sheet No. 282

Columbia Transmission states that it is making the submission to effectuate revisions to Section 4 of the General Terms and Conditions of its tariff required by the Commission by order issued July 3, 1997.

Columbia Transmission states further that copies of this filing have been mailed to all of its customers, affected state regulatory commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's 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 proceedings. A copy of this filing is on file with the Commission and is available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19305 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–390–001]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 14, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing an effective date of July 7, 1997:

Substitute Third Revised Sheet No. 145
Substitute Second Revised Sheet No. 145A

Columbia Gulf states that it is making the submission to effectuate revisions to Section 4 of the General Terms and Conditions of its tariff required by the Commission by order issued July 3, 1997.

Columbia Gulf states further that copies of this filing have been mailed to all of its customers, affected state regulatory commissions, and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's 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. A copy of this filing is on file with the Commission and is available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19306 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–26–017]

El Paso Natural Gas Company; Notice of Report of Refunds

July 17, 1997.

Take notice that on July 8, 1997, El Paso Natural Gas Company (El Paso) tendered for filing its Report of Refunds at Docket Nos. RP91–26–014, et al.

El Paso states that the Report of Refunds reflects elimination of ineligible take-or-pay costs and related interest previously collected in direct bills and throughput surcharges. El Paso states that refunds were distributed on June 23, 1997.

El Paso states that the refunds totaled $2,706,380.12 inclusive of interest. El Paso states that the refund was comprised of $923,677.73 inclusive of interest distributed to customers subject to a direct bill and $1,782,702.39 inclusive of interest distributed to customers subject to a throughput surcharge.

El Paso states that copies of the document were served upon all interstate pipeline system customers who received a refund distribution and affected state regulatory commissions in accordance with the requirements of Section 385.2010 of the Commission's Rules of Practice and Procedure. El Paso states that each customer received its pertinent detail (included in Volume No. 2) when refunds were distributed. El Paso states that it was not furnishing the complete Volume No. 2 to all customers, since it may contain information that is commercially sensitive to those customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19287 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3104–000, ER97–3106–000, and ER97–3117–000]

Golden Spread Electric Cooperative Inc.; Notice of Filing

July 17, 1997.

Take notice that on June 20, 1997, Golden Spread Electric Cooperative, Inc. Tendered for filing additional information in the above-referenced dockets.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before July 28, 1997. Protests will be

considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19284 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–415–001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 15, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 1, 1997:

Substitute Second Revised Sheet No. 162

Iroquois states that the purpose of this filing is to correct a pre-existing inaccuracy in Iroquois' July 2, 1997, filing in this docket.

Any person desiring to protest said filing should file a protest with Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining 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. 97–19307 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–631–000]

Koch Gateway Pipeline Company; Notice of Application

July 17, 1997.

Take notice that on July 11, 1997, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–631–000, an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, requesting authority to revise the cushion gas and working gas parameters of its Bistineau Storage Facility (Bistineau) located in Bienville and Bossier Parishes, Louisiana, and to increase Bistineau's protective acreage by 160 acres, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Koch Gateway seeks authorization to reduce the cushion gas in Bistineau by 5 Bcf and to increase the working gas volume by the same amount. No change in the total certificated capacity or maximum shut-in pressure is proposed. Koch Gateway also seeks to expand the protective acreage for Bistineau by 160 acres to the immediate west of the existing protective acreage. Finally, Koch Gateway seeks to operate the Koch Fee #1 test well as a injection/withdrawal well at Bistineau. Koch Gateway states that the Koch Fee #1 well will be an observation well from which withdrawals will be made only to the extent necessary to capture gas which is migrating from Bistineau.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 7, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19281 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–115–002]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 11, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the filing tariff sheets with an effective date of April 1, 1997:

Substitute Sixth Revised Sheet No. 2705
Substitute Sixth Revised Sheet No. 2706

Koch states that this filing is in compliance with the Commission's Order on Compliance Filing, issued on July 1, 1997, 80 FERC ¶ 61,005 (1997). Koch states that the tariff sheets reflect the reinstatement of Koch's language concerning prior period adjustments.

Koch also states that it has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC., 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed on or before July 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19294 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–154–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to become effective August 1, 1997:

Fifth Revised Volume No. 1
First Revised Sheet No. 2403

In compliance with the Commission's Letter Order issued June 4, 1997, in the above captioned docket, Koch states that this filing reflects GISB Standard 4.3.6 to become effective on August 1, 1997.

Koch also states that it has served copies of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

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 Section 154.210 of the Commission's Rules and 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. 97–19296 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–364–002]

Koch Gateway Pipeline Company; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective June 1, 1997:

Fifth Revised Volume No. 1

Substitute First Revised Sheet No. 4602
Substitute Third Revised Sheet No. 4702
Substitute First Revised Sheet No. 4806

Koch asserts that the purpose of this filing is to comply with the Office of Pipeline Regulation's Letter Order issued July 1, 1997, in Docket No. RP97–364–001. Koch has made minor clarifications to its tariff that the Commission has requested.

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 Section 154.210 of the Commission's Rules and 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. 97–19301 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–365–002]

Koch Gateway Pipeline Company; Notice of Refund Report

July 17, 1997.

Take notice that on July 15, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing a final reconciliation report of the Stranded Account No. 191 Costs. On May 2, 1997, Koch filed in Docket No. RP97–365–000, its intentions to terminate the collection of the Account No. 191 surcharge effective June 1, 1997, by filing tariff sheets reflecting the removal of the Account 191 surcharges. In a Letter Order dated May 19, 1997, the Commission accepted these tariff sheets with an effective date of June 1, 1997. The report reflects the amounts refunded to each shipper plus the applicable interest earned since June 1, 1997.

Koch also states that it has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19302 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–419–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 14, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to become effective August 14, 1997.

Second Revised Sheet No. 140

Koch states that the above referenced tariff sheet is being filed to remove the last partial paragraph on page 1408 due to pagination error. This paragraph is repeated in its entirety on the Fifth Revised Sheet No. 1409, which was accepted by Letter Order dated May 29, 1997. This error occurred due to multiple dockets having been filed

relating to these two pages, but will be corrected by this filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Rules and 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. 97–19310 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–583–001]

MidCon Texas Pipeline Operator Inc.; Notice of Amendment

July 17, 1997.

Take notice that on July 11, 1997, MidCon Texas Pipeline Operator, Inc. (MTP), located at 3200 Southwest Freeway, Houston, TX 77027–7523, filed an amendment in Docket No. CP96–583–001, pursuant to Section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's Regulations, seeking to amend the Section 3 authorization and Presidential Permit previously issued to MidCon Texas Pipeline Corp. (MidCon Texas) on November 26, 1996.[1]

MTP states that, as a result of corporate reorganization, it is the successor to MidCon Texas, and requests that it be allowed to succeed to the authority originally granted to MidCon Texas. MTP also requests that the previous authorization be amended to change the location of the border crossing facility from the original location in Starr County, Texas, near the town of Fronton to a proposed location at a point approximately seven miles upstream on the Rio Grande River near the town of Salineño, also in Starr County.

[1] 77 FERC ¶ 61,205.

MTP also states that the border crossing facility will be essentially the same as the originally approved dual 12-inch meter and a run of 24-inch pipe extending to the International Boundary in the middle of the river. However, due to the proposed new location, the run of 24-inch pipe will be 1,500 feet instead of the originally approved 800 feet. Thus, the cost of the border crossing facility is now estimated to be $620,000, rather than the originally estimated $520,000.

Any person desiring to be heard or to make any protest with reference to said amended application should on or before August 6, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 or 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 to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19277 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–73–006]

Mississippi River Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

July 17, 1997.

Take notice that on July 11, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective August 1, 1997:

Third Revised Sheet No. 80

MRT states that the purpose of this filing is to comply with the letter order issued in this docket on June 13, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests 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. 97–19293 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–155–006]

Mobile Bay Pipeline Company; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 10, 1997, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 1, 1997:

Second Revised Volume No. 1
First Revised Sheet No. 186
Original Sheet No. 186A

Mobile Bay states that this filing is in compliance with the Commission's Letter Order issued June 4, 1997, in the above captioned docket. Mobile Bay states that the above referenced tariff sheets are being filed to reflect GISB Standard 4.3.6 to become effective on August 1, 1997, pursuant to the Commission's Letter Order and in compliance with Order No. 587–C.

Mobile Bay also states that it served copies of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

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 Section 154.210 of the Commission's Rules and Regulation. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not served to make protestants parties to

the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19295 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–638–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

July 17, 1997.

Take notice that on July 14, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–638–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap in Chautauqua County, New York under National's blanket certificate issued in Docket No. CP83–4–000 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.

National proposes to construct and operate a new sales tap, within its Sheridan Station, designated SD RM#235. The tap will provide service to National Fuel Gas Distribution Corporation. The estimated cost of the sales tap is $25,000, for which National will be reimbursed.

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. 97–19282 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–61–007]

NorAm Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

July 17, 1997.

Take notice that on July 11, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective August 1, 1997:

Second Revised Sheet No. 306

NGT states that the purpose of this filing is to comply with the letter order issued in this docket on June 30, 1997.

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 Section 385.211). 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. 97–19292 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–22–007]

Northern Border Pipeline Company; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 10, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective August 1, 1997:

First Revised Sheet Number 300F

Northern Border states that this filing is made to comply with the Letter Order of the Commission dated June 2, 1997, in which the Commission directed Northern Border to file tariff sheets to implement the Internet Web page standards.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19290 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–004]

Northern Natural Gas Company; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 14, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, effective July 7, 1996:

Sub Second Revised Sheet No. 206
Sub Original Sheet No. 206A
2nd Substitute Second Revised Sheet No. 252
2nd Substitute Third Revised Sheet No. 287
Sub Original Sheet No. 287A
First Revised Sheet No. 287A
2nd Substitute First Revised Sheet No. 299
Sub Original Sheet No. 299A

On June 7, 1996, in Docket No. RP96–272–000, Northern filed tariff sheets to give it the ability to negotiate rates as contemplated by the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking Methodologies, issued January 31, 1996. On July 5, 1996, the Commission issued an Order Accepting Tariff Sheets Subject To Conditions in Docket No. RP96–272–000. On July 19, 1996,

Northern filed tariff sheets to comply with the Commission's directives in its July 5, 1996 Order. On June 27, 1997, the Commission issued an Order Accepting Tariff Sheets Subject To Conditions in Docket No. RP96–272–001 (June 27 Order). The reason for this filing is to comply with the June 27 Order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19288 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–372–002]

Northern Natural Gas Company; Notice of Compliance Filing

July 17, 1997.

Take notice that on July 11, 1997, Northern Natural Gas Company (Northern) tendered for filing its work papers supporting its Unrecovered Balance as of April 30, 1997.

Northern states that the filing is made to comply with the Commission's Order in this Docket dated June 26, 1997 to provide workpapers supporting the unrecovered balance and corresponding carrying charge related to the GSR–RA Surcharge. Northern has filed the supporting workpapers for the revised GSR–RA surcharge which is designed to recover price differentials associated with unassigned Reverse Auction (RA) Contracts and applicable carrying charges.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19303 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–374–001]

Northwest Pipeline Corporation, Notice of Compliance Filing

July 17, 1997.

Take notice that on July 9, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective July 1, 1997:

Substitute Second Revised Sheet No. 202–B
Substitute Fourth Revised Sheet No. 244

Northwest states that the purpose of this filing is to comply with the Commission's June 30, 1997 order in Docket No. RP97–374–000. Northwest states that its definition of negotiated rates has been revised to clarify that a negotiated rate could include a formula used to compute a negotiated rate.

Northwest further states that a copy of this filing has been served upon all intervenors in Docket No. RP97–374.

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 as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19304 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–624–000]

Pacific Gas Transmission Company; Notice of Request under Blanket Authorization

July 17, 1997.

Take notice that on July 9, 1997, Pacific Gas Transmission Company (PGT), 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP97–624–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a new tap and meter set near Bend, Oregon under PGT's blanket certificate issued in Docket No. CP82–530–000 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.

PGT proposes to install a new tap and meter set in Deschutes County, near Bend, Oregon for delivery of gas to Cascade Natural Gas Corporation. PGT will initially deliver 20,000 cf/h through the tap, with potential expandability to 75,000 cf/h. The estimated cost of the tap is $386,530.

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. 97–19278 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–418–000]

Pacific Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 14, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheet: Fourth Revised Sheet No. 62; and as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet: Fifth Revised Sheet No. 109. PGT requests these tariff sheets become effective August 14, 1997.

PGT states that the tariff sheets which it is submitting reflects modification of the bill payment due date set forth in its tariffs to require payment on or before the tenth day following the date bills for service are rendered. This change is proposed to maintain approximately the same amount of time between billing and payment dates that existed before PGT implemented the Gas Industry Standards Board Standards on June 1, 1997.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to be heard or 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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19309 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–224–006]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

July 17, 1997.

Take notice that on July 10, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, (Tariff) the following revised Tariff sheet in compliance with the Commission's Order No. 587–C and the Commission's June 27, 1997, Order in this docket, to become effective August 1, 1997.

Second Substitute Second Revised Sheet No. 95

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's Regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order, 18 CFR 284.10(b). On March 4, 1997, the Commission issued Order No. 587–C to implement additional GISB Standards, including Standard 4.3.6 containing a requirement that all pipelines establish an Internet Web page by August 1, 1997. On June 27, 1997, the Commission issued an order accepting Sea Robin's filing subject to certain conditions. The June order required Sea Robin to submit a compliance filing to show that Sea Robin would comply with Standard 4.3.6 effective August 1, 1997. In conjunction with the compliance filing, Sea Robin requests a waiver of the June 27 Order and the Commission's Regulations to file the tariff sheet in less than 30 days prior to the effective date. Sea Robin states that such waiver is appropriate because it is consistent with Sea Robin's April 30 tariff filing, and the timeline established in Order No. 587–C.

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, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR Sections 385.211 and 385.214). 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. 97–19299 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–60–007]

Tennessee Gas Pipeline Co.; Notice of Tariff Filing

July 17, 1997.

Take notice that on July 10, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed revised tables indicating Tennessee's intended use of the data elements promulgated by the Gas Industry Standards Board (GISB) and adopted by the Commission in compliance with the Commission's directives in its order issued June 30, 1997 in the referenced proceeding. In addition, Tennessee filed the following *pro forma* tariff sheets: Sub Original Sheet No. 665 and Sub Original Sheet No. 675 and, pursuant to Section 4 of the Natural Gas Act, requested a waiver to permit implementation of Version 1.2 of the GISB standard datasets as set forth in GISB's July 31 Implementation Guide on an accelerated basis.

Tennessee states that the revised tables reflect the changes necessary to comply with the Commission's June 30 Order. *Tennessee Gas Pipeline Company*, 79 FERC ¶ 61,417 (1997).

Tennessee states that the *pro forma* tariff sheets propose revisions to Tennessee's *pro forma* Electronic Data Interchange Trading Partner Agreement (TPA) which are necessary to make Tennessee's TPA consistent with the TPA for Tennessee's affiliated pipeline company, Midwestern Gas Transmission Company, as modified by Commission order in *Midwestern Gas Transmission Company*, 79 FERC ¶ 61,350 (1997).

Tennessee states that Tennessee has requested a waiver to permit implementation of Version 1.2 the GISB's July 31 Implementation Guide on an accelerated basis so that its customers may use the best available GISB data elements at the earliest possible time. In the alternative, Tennessee proposes to implement Version 1.1 of GISB standard datasets on an accelerated basis.

Tennessee states that copies of this filing have been mailed to each of the parties that have intervened in the referenced proceeding.

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, Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19291 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Technical Conference

July 17, 1997.

In the Commission's order issued May 29, 1997, (79 FERC ¶ 61,257) the Commission held that the filing in the above captioned proceeding raise issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday August 28, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19300 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–6–008]

Trunkline Gas Company; Notice of Proposed Changes In Ferc Gas Tariff

July 17, 1977.

Take notice that on July 14, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective April 1, 1997:

Sub Fourth Revised Sheet No. 46
First Revised Sheet No. 46A
Sub Fourth Revised Sheet No. 52

Trunkline states that the purpose of this filing is to make conforming tariff changes pursuant to the Commission's letter order issued in Docket No. RP97–186–002.

Tunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

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 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. 97–19289 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–417–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1997.

Take notice that on July 14, 1997, Trunkline Gas Company (Trunkline) tendered filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective August 13, 1997:

Fifth Revised Sheet No. 223
Fourth Revised Sheet No. 224

Trunkline asserts that the purpose of this filing is to comply with the Commission's Order on Partial Remand issued on June 12, 1997 in Docket No. RS92–25–010 to revise Section 24 of the General Terms and Conditions to credit excess interruptible storage revenue to interruptible shippers, as well as firm shippers.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

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, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19308 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–30–000]

Viking Gas Transmission Company; Notice of Refund Report

July 17, 1997.

Take notice that on June 6, 1997, Viking Gas Transmission Company (Viking) tendered for filing a report of Gas Research Institute (GRI) refunds to Viking for the period from January 1, 1996 to December 31, 1996.

Viking states that the refunds have been based on a total refund from GRI to Viking of $228,893.00, and have been allocated among Viking's firm shippers based on their relative contributions to GRI funding during 1996. Viking also states that the reported refunds will be credited to Viking's customers on July 1997 invoices.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 24, 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. 97–19286 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER94–1288–013, ER95–19–013, and ER94–1381–004]

Western Regional Transmission Association; Northwest Regional Transmission Association; Southwest Regional Transmission Association; Notice of Filing

July 17, 1997.

Take notice that on June 2, 1997, Western Regional Transmission Association, Northwest Regional Transmission Association and Southwest Regional Transmission Association tendered for filing a Report on Coordinated Transmission Planning in the Western Interconnection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 29, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 97–19283 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–629–000]

Williams Natural Gas Company; Notice of Request under Blanket Authorization

July 17, 1997.

Take notice that on July 10, 1997, Williams Natural Gas Company (WNG), One Williams Center, Tulsa, Oklahoma 74101, filed in Docket No. CP97–629–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to utilize facilities, originally installed for the delivery to NGPA Section 311 transportation gas to ONG Transmission Company (ONG) in Woodward County, Oklahoma, for purposes other than NGPA Section 311 transportation, 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 which is on file with the Commission and open to public inspection.

WNG seeks authorization to use the facilities, commonly known as the Mutual interconnect, for transportation and delivery of gas under Part 284 of the Commission's Regulations. WNG states the cost to acquire and install the facilities was $965,138, which will be reimbursed through a new firm transportation agreement with a third party. WNG relates that it began delivering gas to ONG through the Section 311 facilities on July 1, 1997. WNG says the initial delivery was 20,000 Dth. ONG estimates that peak day deliveries will be approximately 50,000 Dth with an annual volume of 9,125,000 Dth.

WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. WNG says it has sent a copy of this request to the Oklahoma Corporation Commission.

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. 97–19280 Filed 7–22–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5862–4]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that reductions in expenditures of non-Federal funds for the Sacramento Metropolitan Air Quality Management District (SMAQMD) in Sacramento, California are a result of non-selective reductions in expenditures. This determination, when final, will permit the SMAQMD to keep the financial assistance awarded to it by EPA for FY–96 and to be awarded financial assistance for FY–97 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by August 22, 1997.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Valerie Cooper, Grants and Program Integration Office AIR–8, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Valerie Cooper, Grants and Program Integration Office AIR–8, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1237.

SUPPLEMENTARY INFORMATION: Under the authority of section 105 of the CAA, EPA provides financial assistance to the SMAQMD, whose jurisdiction includes Sacramento County in California, to aid in the operation of its air pollution control programs. In FY–95, EPA awarded the SMAQMD $1,272,403 which represented approximately 14% of the SMAQMD's budget, and in FY–96 $1,581,581 which represented approximately 16% of the SMAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

The SMAQMD is a single-purpose agency whose source of funding originates from several different sources as described below. It is the ''unit of Government'' for section 105 (c)(2) purposes. In its FY–96 section 105 application, the SMAQMD projected non-recurrent non-Federal expenditures (or its maintenance of effort (MOE)) of $8,132,074 which included fees collected by SMAQMD for permits it issues under Title V of the CAA.[1] In January of 1997, however, the SMAQMD submitted to EPA documentation which shows that its actual FY–96 MOE was $6,980,263 which is exclusive of Title V. This amount represents a shortfall of $1,084,267 from the MOE of the preceding fiscal year (FY–95). In order for the SMAQMD to be eligible to keep its FY–96 grant and to be awarded an FY–97 grant, EPA must make a determination under section 105(c)(2).

In FY–96, the SMAQMD determined that its MOE would decrease because: (1) Revenue from Title V permit fees are not available for MOE purposes, (2) revenue from the Department of Motor Vehicles (DMV) decreased, (3) contributions from Sacramento, County are no longer available, (4) the Small Business Assistance Center is providing less funding to the District as well as to other State agencies.

The SMAQMD's MOE reductions resulted from circumstances beyond the District's control. EPA proposes to determine that the SMAQMD's lower FY–96 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SMAQMD to keep the funds received from EPA for FY–96 and to be eligible for an FY–97 award.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by August 22, 1997 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by August 22, 1997. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: July 10, 1997.

David P. Howekamp,

Director, Air Division.

[FR Doc. 97–19395 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–P

[1] A CAA section 105 grantee's MOE may be reduced to reflect the transfer of activities to an EPA approved Title V program previously funded through section 105 grants. See 60 FR 366, 368 (January 4, 1995) and 40 CFR 35.205(b).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5862–3]

Notice of Meeting, Board of Scientific Counselors (BOSC), Subcommittee Review of the National Health and Environmental Effects Research Laboratory (NHEERL)

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Board of Scientific Counselors (BOSC) of the Office of Research and Development (ORD) will conduct a meeting on August 4 and 5, 1997. The Committee will review the activities of the National Health and Environmental Effects Research Laboratory (NHEERL) of the ORD. The focus of the session will be to assess the adequacy of the organization's scientific and technical efforts. The meeting will be held at the U.S. EPA's Environmental Research Center, Classroom number 3 starting at 9 am, on August 4 and 5, and ending no later than 5 pm on either day. The main laboratory telephone number is (919) 541–2282.

The meeting is open to the public, and seating is limited. Any member of the public wishing further information concerning the meeting should contact Randall C. Bond, Designated Federal Officer at (919) 541–2973. Those individuals requiring a copy of the Agenda should contact Ms. Nancy Fowler at (919) 541–1968. Members of the public wishing to make comments at the sessions should provide those comments to Mr. Bond no later than July 23, 1997. Comments will be limited

to 5 minutes, and the Board expects that such items will not be repetitive of previously submitted materials.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA, (MC8701), 401 M Street, S.W., Washington, D.C. 20460, (202) 260–0468.

Dated: July 14, 1997.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–19390 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64034; FRL 5729–8]

Cancellation of Pesticides for Non-Payment of 1997 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for about 1,113 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Rm. 226, Crystal Mall #2, 1921 Jefferson Davis Highway South, Arlington, VA, (703) 305–6426; e-mail: jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i)(5) of FIFRA as amended in October, 1988, and again in December, 1991 requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 82 minor agricultural use registrations at the request of the registrants.

In late November, 1996, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15.

A notice of intent to cancel was sent in mid-March to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Late payments of the fees were accepted until May 15, when the actual process of cancellation was begun. Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 16,381 section 3 registrations, or about 94 percent of the registrations on file in November. Fees have been paid for about 2,512 section 24(c) registrations, or about 88 percent of the total on file in November. Cancellations for non-payment of the maintenance fee affect about 849 section 3 registrations and about 264 section 24(c) registrations.

II. Product Cancellations not Affecting Status of Active Ingredient

In cases where the active ingredients will remain available in other registered products, we anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until the due date for the next annual registration maintenance fee, January 15, 1998. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique non-agricultural uses will disappear, although the active ingredients will remain available for different uses in other products. When this situation occurs, there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Active Ingredients

A second type of impact arises if an active ingredient that is now or has recently been available for one or more minor agricultural uses disappears from the marketplace. The Agency believes that no active ingredients registered for minor use will disappear because of the cancellation actions described in this notice.

IV. Public Docket

Because so many registrations are involved, it would be impractical to list those which have been canceled in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, Room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional

Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: July 9, 1997.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–19389 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50833; FRL–5731–8]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of a notification (241–NMP–L) of intent to conduct small-scale field testing involving a microorganism, *Helicoverpa zea* single-embedded nuclear polyhedrosis virus (HzSNPV), which has been genetically engineered to (1) express an insect-specific pesticidal toxin, AaH IT1, from the scorpion *Androctonus australis* and (2) prevent expression of the ecdysteroid UDP-glucosyltransferase gene. American Cyanamid Company intends to test this microbial pesticide on cotton in seven states for control of the tobacco budworm and the cotton bollworm. The Agency has determined that these notifications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on these notifications.

DATES: Written comments must be submitted to EPA by August 22, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–50833] and the appropriate file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under the SUPPLEMENTARY INFORMATION unit of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: William R. Schneider, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703) 308–8683; e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Notice of receipt of this notification does not imply a decision by the Agency on this notification.

1. A Notification (241–NMP–L) was received from American Cyanamid Company. The proposed small-scale field trial involves the introduction of a baculovirus, *Helicoverpa zea* single-embedded nuclear polyhedrosis virus (HzSNPV), which has been genetically engineered to express a gene which encodes for an insect-specific pesticidal toxin, AaH IT1, from the venom of the scorpion *Androctonus australis*. In addition, the gene for ecdysteroid UDP-glucosyltransferase (EGT) has been replaced with the same gene containing a deletion so that this enzyme will not be produced in the infected insect larvae. When insects are infected with the naturally-occurring (wild-type) virus, EGT prevents the insect from molting, and the insect will continue to eat and grow without molting. In contrast, an insect infected with the engineered virus, will not eat or molt resulting in death one to two days earlier than seen for the wild-type virus.

2. American Cyanamid has previously field tested a different baculovirus engineered to express the same toxin and having the same EGT deletion in 1995 and 1996. The purpose of the proposed testing will be to evaluate the efficacy of the baculovirus against the tobacco budworm (*Heliothis virescens*) and the cotton bollworm (*Helicoverpa zea*) on cotton. The total acreage for all sites will not exceed 3.9 acres. Individual tests will be conducted in: Alabama, Georgia, Louisiana, Mississippi, New Jersey, North Carolina, and Texas. The total amount of HzSNPV for all of the testing will not exceed 100 grams of active ingredient. On completion of the test, the crops will be destroyed. Ground spray equipment will be used and will be disinfected with 0.1% bleach solution following use.

Following review of these notifications and any comments received in response to this notice, EPA may approve the tests, ask for additional data, require additional modifications to the test protocols, or require EUP applications to be submitted. In accordance with 40 CFR 172.50, under no circumstances shall the proposed tests proceed until the submitters have received notice from EPA of its approval of such tests.

The official record for this notice, as well as the public version, has been established for this notice under docket control number [OPP–50833] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–50833] and the appropriate file symbol. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection and Genetically engineered microbial pesticides.

Dated: July 16, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–19387 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50831; FRL–5727–8]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Office of Pesticide Programs, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 3142, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit to Rogers Seed Company, 600 N. Armstrong Place, Boise ID 83740.

65268–EUP–1. Issuance. This experimental use permit allows the use of the plant pesticide *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material (plasmid vector pZ01502) in 44,928 pounds of seeds shipped for 4,922 acres of corn to evaluate the control of the corn earworm, European corn borer, and fall armyworm. The program is authorized only in the States of California, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Maryland, Minnesota, Washington, and Wisconsin. The experimental use permit is effective through March 31, 1998. Exemptions from the requirement of a tolerance for the plant pesticide active and inert ingredients in or on all raw agricultural commodities have been established (40 CFR 180.1173 and 180.1175).

Persons wishing to review this experimental use permit are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 25, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–19386 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5862–2]

Proposed Administrative Order On Consent; Clear Creek/Pinto Beans Site, Clear Creek County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed 122(h)(1) settlement.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement agreement under section 122(h)(1) concerning the Clear Creek/Pinto Beans Site in Clear Creek County, Colorado (the Site). The proposed Administrative Order on Consent (AOC) requires the potentially responsible party (PRP), Shupe & Yost, Inc., to pay a total of $11,200.00 to resolve its liability to the U.S. EPA related to response actions taken or to be taken at the Site.

DATES: Comments must be submitted on or before August 22, 1997.

ADDRESSES: Comments should be addressed to Sharon Abendschan, (8ENF–T), Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Clear Creek/Pinto Beans Site Administrative Settlement Agreement, EPA.

FOR FURTHER INFORMATION CONTACT: Karen Kellen, (8ENF–L), Legal Enforcement Program, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6518.

SUPPLEMENTARY INFORMATION: Notice of section 122(h)(1) Administrative Settlement Agreement: In accordance with section 122(h)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by the settling party Shupe & Yost, Inc.

By the terms of the proposed AOC, Shupe & Yost, Inc., will pay $11,200.00 to the EPA Hazardous Substance Superfund. In exchange for payment, U.S. EPA will provide Shupe & Yost, Inc., with a covenant not to sue for liability under sections 106 and 107(a) of CERCLA.

The amount that Shupe & Yost, Inc., will pay was determined through negotiations between EPA and Shupe & Yost, Inc. The settlement amount was determined by a financial analysis of the Shupe & Yost, Inc., financial documents submitted to EPA.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed administrative settlement agreement.

A copy of the proposed AOC may be obtained in person or by mail from Sharon Abendschan, Enforcement Specialist (ENF–T), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6957. Additional background information relating to the administrative settlement agreement is available for review at the Superfund Records Center at the above address.

Dated: July 15, 1997.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 97–19391 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5861–9]

Proposed Agreement and Covenant Not to Sue Mill Creek Township, Erie PA, Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a Proposed Agreement and Covenant Not to Sue Millcreek Township, Erie PA (''Agreement'') concerning property adjacent to the Millcreek Dump Superfund Site (''the Site'') was executed by the Agency on May 6, 1997. The Agreement will enable Millcreek Township to accept a donation of approximately 64 acres of property adjacent to the Site and currently owned by Consolidated Rail Corporation (''Conrail''). Conrail's donation of the property to Millcreek Township will allow Millcreek Township to facilitate and implement the EPA approved remedial action at the Site by allowing all forms of access necessary to comply with an

Administrative Order issued by EPA on March 31, 1992. In exchange therefor, Millcreek Township will receive from the United States a Covenant Not to Sue pursuant to CERCLA for any contamination currently existing on the property.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before August 22, 1997.

AVAILABILITY: The proposed Agreement and additional background information relating to the Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed Agreement may be obtained from Benjamin Cohan, U.S. Environmental Protection Agency, Assistant Regional Counsel (3RC23), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the ''Millcreek Dump Superfund Site'' and ''EPA Docket No. III–97-91-DC,'' and should be forwarded to Benjamin Cohan at the above address.

FOR FURTHER INFORMATION CONTACT: Benjamin M. Cohan (3RC23), Assistant Regional Counsel, U.S. Environmental Protection Agency 841 Chestnut Building, Philadelphia, PA 19107, *Phone:* (215) 566–2618.

Dated: July 7, 1997.

Thomas Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 97–19393 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44641; FRL–5730–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on alkyl glycidyl ether (CAS No. 120547–52–6) and cyclohexane (CAS No. 110–82–7). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for alkyl glycidyl ether were submitted by the Society of the Plastics Industry, Inc. (SPI) Epoxy Resin Systems AGE Task Force. The following companies comprise the Task Force: Air Products and Chemicals Inc.; Callaway Chemical Company; Ciba-Geigy Corporation; CVC Specialty Chemicals; and Shell Chemical Company. The submission includes a final report entitled ''Micronucleus Cytogenetic Assay in Mice.'' This report was submitted in accordance with a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on May 15, 1997. This chemical is used as an epoxy resin additive and as a modifier for other epoxides in flooring and adhesives.

Test data for cyclohexane were submitted by the Cyclohexane Panel of the Chemical Manufacturers Association (CMA). The following test sponsors comprise the CMA Cyclohexane Panel: Chevron Chemical Company; CITGO Refining Chemicals Co., LP; E.I. du Pont de Nemours Company; Huntsman Corporation; Koch Industries Inc.; Phillips Petroleum Company; and Sun Company, Inc. The submission includes a final report entitled ''Inhalation Developmental Toxicity Study of Cyclohexane in Rabbits.'' This report was submitted in accordance with a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on June 16, 1997. Cyclohexane is found in a number of consumer products including spray paint and spray adhesive. It is also available as a laboratory solvent. EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44641). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202)260–5069 or e-mail: oppt.ncic@epamail.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: July 14, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–19388 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5862–1]

Clean Water Act Class Ii: Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Halls Ferry Center, Inc., and Halak, Inc.

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Complaint, notice of proposed civil penalty and opportunity to request hearing.

SUMMARY: The EPA is providing notice of a proposed civil penalty for alleged violations of the Clean Water Act (''Act''). The EPA is also providing notice of opportunity to request a hearing on the proposed penalty.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. The EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. The EPA provides the public notice of the proposed penalty pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of

Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is August 22, 1997.

On June 30, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Halls Ferry Center, Inc. and Halak, Inc., EPA Docket No. VII–97–W–0018.

The Complaint proposes a penalty of Twenty Thousand Dollars ($20,000) for failure to comply with section 301 of the CWA, 33 U.S.C. 1311.

FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Halls Ferry Center, Inc. and Halak, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to August 22, 1997.

Dated: July 9, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–19392 Filed 7–22–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 16, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 22, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0496.

Title: ARMIS Operating Data Report.

FCC Report No.: FCC 43–08.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 160 hours.

Cost to Respondents: N/A.

Total Annual Burden: 8,000 hours.

Needs and Uses: FCC Report 43–08 consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage, and reliability. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy.

OMB Approval Number: 3060–0512.

Title: ARMIS Annual Summary Report.

FCC Report No.: FCC 43–01.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 150.

Estimated Time Per Response: 220 hours.

Cost to Respondents: N/A.

Total Annual Burden: 33,000 hours.

Needs and Uses: The Annual Summary Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy.

OMB Approval Number: 3060–0579.

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 16.

Estimated Time Per Response: 125 hours.

Cost to Respondents: Total operation and maintenance and purchase of services component: $9,600. Respondents are subject to a filing file of $600. Thus, 16 respondents filing an average of 1 filing a year=16×$600=$9,600.

Total Annual Burden: 1,996 hours.

Needs and Uses: Local exchange carriers are required to make tariff filings: (1) To provide new switched transport expanded interconnection services, and (2) to comply with new Commission standards governing nonrecurring charges. The tariffs and cost support information accompanying them will be used by FCC staff to ensure that tariff rates to be paid for expanded interconnection and switched transport services are just, reasonable, and nondiscriminatory. Without this information the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. Tariffs will also be used by parties using expanded interconnection and switched transport offerings to ascertain the charges and other terms and conditions applicable to those offerings.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19352 Filed 7–22–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1179–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1179–DR), dated July 7, 1997, and related determinations.

EFFECTIVE DATE: July 7, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 7, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms and flooding beginning on June 21, 1997, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James E. McClanahan of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Bandera, Bexar, Burnet, Guadalupe, Kendall, Llano, Medina, Real and Uvalde Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: July 10, 1997.

James L. Witt,

Director.

[FR Doc. 97–19367 Filed 7–22–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1179–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1179–DR), dated July 7, 1997, and related determinations.

EFFECTIVE DATE: July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1997:

Kerr, Mason, and Travis Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–19368 Filed 7–22–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1180–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1180-DR), dated July 7, 1997, and related determinations.

EFFECTIVE DATE: July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 7, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and flooding on June 21–23, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent

with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Milwaukee, Ozaukee, Waukesha, and Washington Counties for Individual Assistance.

Milwaukee, Ozaukee, and Waukesha Counties for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: July 10, 1997.

James L. Witt,

Director.

[FR Doc. 97–19369 Filed 7–22–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA–REP–4–TN–2]

Tennessee Multi-Jurisdictional Radiological Emergency Response Plan for the Watts Bar Nuclear Plant

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Finding and Determination.

SUMMARY: FEMA gives notice of approval of the State of Tennessee and local radiological emergency response plans and preparedness site-specific to the Watts Bar Nuclear Plant.

DATES: This certification and approval are effective as of July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Regional Director, FEMA Region IV, 3003 Chamblee Tucker Road, Atlanta, Georgia 30341. Please refer to Docket No. FEMA–REP–4–TN–2.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Emergency Management Agency (FEMA) Rule, Title 44 CFR, Part 350, the State of Tennessee originally submitted the offsite Multi-Jurisdictional Radiological Emergency Response Plan (MJRERP) site-specific to the Watts Bar Nuclear Plant, located in Rhea County, Tennessee, to the Regional Director of FEMA Region IV in March 1993, for FEMA review and approval. On December 15, 1995, in accordance with Title 44, CFR Part 350 and the Memorandum of Understanding between FEMA and the U.S. Nuclear Regulatory Commission (NRC), FEMA prepared an Interim Findings Report regarding the adequacy of the offsite radiological emergency response plans and preparedness site-specific to Watts Bar, based on a review and evaluation of the MJRERP, and the October 6–7, 1993, and November 15, 1995, exercises of the offsite plans. Subsequently, on May 24, 1996, the Regional Director submitted a final evaluation and recommendation for formal approval of the MJRERP to the Associate Director for Preparedness, Training and Exercises in accordance with Section 350.11 of the FEMA Rule. However, during the Headquarters review process several issues were identified which were referred back to FEMA Region IV for clarification. The Regional Director subsequently addressed the issues requiring clarification and resubmitted the evaluation to FEMA Headquarters on April 14, 1997. Included in this evaluation was a final review of the full participation offsite radiological emergency preparedness exercise conducted on November 15, 1995, in accordance with Section 350.9 of the FEMA Rule. Based on the evaluation and recommendation for approval by the FEMA Region IV Director, the review by the Federal Radiological Preparedness Coordinating Committee (FRPPC), and the review by the FEMA Headquarters staff, I find and determine that, in accordance with Section 350.12 of the FEMA Rule, the State of Tennessee and local radiological emergency response plans and preparedness site-specific to the Watts Bar Nuclear Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite radiological emergency response plans and preparedness are assessed as adequate in that there is reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that the plans are capable of being implemented. The prompt alert and notification system installed and operational around the Watts Bar Nuclear Plant was previously approved by FEMA on December 15, 1995, in accordance with the criteria of NUREG–0654/FEMA–REP–1, Rev. 1, Appendix 3, and FEMA REP–10, ''Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants.'' FEMA will continue to review the status of offsite plans and preparedness site-specific to the Watts Bar Nuclear Plant in accordance with Section 350.13 of the FEMA Rule.

Dated: July 3, 1997.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Consumer Compliance Task Force of the Federal Financial Institutions Examination Council (FFIEC) is issuing Interagency Questions and Answers Regarding Flood Insurance (Interagency Questions and Answers). To help financial institutions meet their responsibilities under federal flood insurance legislation and to increase public understanding of their flood insurance regulations, the staffs of the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the agencies) have prepared answers to the most frequently asked questions about flood insurance. The Interagency Questions and Answers contain informal staff guidance for agency personnel, financial institutions, and the public.

DATES: Public comment is invited on a continuing basis.

ADDRESSES: Questions and comments may be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue NW., Suite 200, Washington, DC 20037, or by facsimile transmission to (202) 634–6556.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist, Compliance Management, (202) 874–4858; or Margaret Hesse, Senior Attorney, Community and

Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Thomas Grundy, Review Examiner, Division of Consumer and Community Affairs, (202) 452–3946; or Lawranne Stewart, Senior Attorney, Legal Division, (202) 452–3513, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452–3544.

FDIC: Ken Baebel, Senior Review Examiner, Division of Compliance and Consumer Affairs, (202) 942–3086; or Mark Mellon, Counsel, Legal Division, (202) 898–3854; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Larry Clark, Senior Manager, Compliance and Trust Programs, (202) 906–5628; Ronald Dice, Program Analyst, Compliance Policy, (202) 906–5633; or Catherine Shepard, Senior Attorney, Regulations and Legislation Division, (202) 906–7275, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FCA: Robert G. Magnuson, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, (703) 883–4498; or William L. Larsen, Senior Attorney, Legal Counsel Division, Office of General Counsel, (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. For the hearing impaired only, TDD, (703) 883-4444.

NCUA: Kimberly Iverson, Program Officer, Office of Examination and Insurance, (703) 518-6375, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The agencies fulfilled these requirements by issuing a joint final rule in the summer of 1996. See 61 FR 45684 (August 29, 1996).

The agencies received a number of requests in the rulemaking process to clarify specific issues covering a wide spectrum of the proposed rule's provisions. Many of these requests were addressed in the preamble to the joint final rule. The agencies concluded, however, given the number, level of detail, and diversity of subject matter of the requests for additional information, that informal staff guidance addressing the more technical compliance issues would be helpful and appropriate. Consequently, the agencies decided to issue informal guidance to address these technical issues subsequent to the promulgation of the final rule. 61 FR at 45685–45686. This objective is fulfilled by the release of the Interagency Questions and Answers.

The purpose of these Interagency Questions and Answers is to consolidate, to the extent possible, useful flood insurance information into a comprehensive document. These Interagency Questions and Answers supplement other documents that the agencies are not superseding, including, for example, interagency staff flood insurance interpretive letters.

Comments

The agencies invite public comment on a continuing basis. The agencies intend to update the Interagency Questions and Answers on a regular basis. If, after reading the Interagency Questions and Answers, financial institutions, examiners, community groups, or other interested parties have unanswered questions or comments about the agencies' flood insurance regulations, they should submit them to the agencies. The agencies will consider including these questions in future guidance.

Interagency Questions and Answers Format

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of the revised flood insurance law and regulations such as the requirement to purchase flood insurance where available, escrow requirements, forced placement, et cetera. The text of the Interagency Questions and Answers follows:

Text of the Interagency Questions and Answers Regarding Flood Insurance

Interagency Questions and Answers Regarding Flood Insurance

Table of Contents

The agencies are providing answers to questions pertaining to the following topics of the flood insurance laws and regulations:

I. Definitions.
II. Requirement to purchase flood insurance where available.
III. Exemptions.
IV. Escrow requirements.
V. Required use of Standard Flood Hazard Determination Form (SFHDF).
VI. Forced placement of flood insurance.
VII. Determination fees.
VIII. Notice of special flood hazards and availability of Federal disaster relief.
IX. Notice of servicer's identity.
X. Appendix A to the Regulation—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

The body of the Interagency Questions and Answers Regarding Flood Insurance follows:

This document answers commonly asked questions about the revised flood insurance laws and regulations that have been raised by financial institutions and other interested parties. It was prepared by staff from the Farm Credit Administration, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision under the auspices of the Federal Financial Institutions Examination Council.

The document does not anticipate all circumstances or contingencies that may affect particular financial institutions. As experience with the application of the revised regulation is gained, the agencies will issue further staff guidance.

For ease of reference the following terms are used throughout the document: Act refers to the National Flood Insurance Reform Act of 1994 (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994 [Pub. L. 103–325, title V, 108 Stat. 2160, 2255–2287 (September 23, 1994)]). Regulation refers to the joint final rule adopted by the agencies (61 FR 45684 (August 29, 1996)).

I. Definitions

Designated Loan—A loan secured by a building or mobile home that is located or to be located in a special flood hazard area (SFHA) in which flood insurance is available under the Act. . .

1. Is an interim loan to construct a commercial building included in this definition?

Answer: Yes. If the purpose of the loan is to construct a building (assuming the loan is secured by that building), the Regulation applies. If the community in which the property is located participates in the National Flood Insurance Program (NFIP), then NFIP policies, subject to certain conditions and restrictions, can be purchased to provide coverage during the construction period for a building that will be located in an SFHA.

2. Are loans secured by raw land that will be developed into buildable lots subject to the Regulation?

Answer: No. Acquisition and development loans would not be subject to the Regulation because they do not meet the definition of a ''designated loan.'' However, when the final construction phase of an ADC (acquisition, development, construction) project is commenced, the Regulation becomes effective. This will require lenders to determine whether the property is located in an SFHA. If the building securing the loan is located *or to be located* in an SFHA, the other requirements of the Regulation will also apply. As noted above, the NFIP permits policies (subject to certain conditions and restrictions) to be purchased prior to the actual construction of a building.

3. Is a home equity loan considered a ''designated loan''?

Answer: Yes, a home equity (or other) loan can be a designated loan, regardless of the lien priority if: the loan is secured by a building or a mobile home; the collateral is located in an SFHA; and, the community where the property is located participates in the NFIP.

4. Are draws against approved lines of credit a ''triggering event'' requiring a flood determination under the Regulation or is it only the original application for the line of credit that triggers a determination?

Answer: Assuming that the line of credit is secured by a building and is thereby a ''designated loan,'' a determination is required when application is made for the loan. Draws against an approved line would not require further determinations. However, a request for an increase in the line of approved credit is a triggering event and might require a new determination, depending upon whether a previous determination was done. (See the response to Question 4 in Section V, Required use of Standard Flood Hazard Determination Form)

5. If the loan request is to finance inventory stored in a building located within an SFHA but the building is not security for the loan, is flood insurance required?

Answer: No. The Act looks to the collateral securing the loan. In this example, the collateral does not meet the definition of a ''designated loan'' because it is not a building or mobile home.

6. If the building and contents both secure the loan, and the building is located in an SFHA, in a community that participates in the NFIP, what are the requirements for flood insurance? What if the contents securing the loan are located in buildings other than the building securing the loan?

Answer: Flood insurance is required for the building located in the SFHA and any contents stored in that building. If collateral securing the loan is stored in buildings that do not secure the loan and these buildings are not located in an SFHA, then flood insurance is not required on those contents.

7. Does the Regulation apply where the lender is taking a security interest only as an ''abundance of caution''?

Answer: Yes. The Act looks to the collateral securing the loan, not to the purpose of the loan. If the lender takes a security interest in improved real estate, the Regulation applies without regard to the purpose of the loan.

8. If a borrower offers a note on a single family dwelling as collateral for a personal loan but the lender does not take a security interest in the dwelling itself, is this a ''designated loan''?

Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building, therefore, the loan is not a ''designated loan.''

9. Does the Regulation apply to loans that are being restructured because of the borrower's default on the original loan?

Answer: Yes, assuming that the loan otherwise meets the definition of a ''designated loan'' and if the lender increases the amount of the loan, or extends or renews the terms of the original loan.

10. A lender makes a loan (not secured by real estate) on the condition that a third party personally guarantees the loan and permits the lender to take a security interest in improved real estate owned by the third party. Is this a ''designated loan'' to which the Regulation applies if the guarantor's property is located in an SFHA in a community that participates in the NFIP?

Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved real estate owned by that third party is so closely tied to the making of the loan that it is considered a ''designated loan'' under the Regulation.

II. Requirement to Purchase Flood Insurance Where Available

1. If flood insurance is not available because the community in which the property securing the loan is located is a non-participating community in the NFIP, does the Regulation apply?

Answer: Yes. The Regulation still applies, although it does not require the borrower to obtain flood insurance. The lender must make a determination on the Special Flood Hazard Determination Form (SFHDF) to determine if the property is located in an SFHA and notify the borrower. The lender may make a conventional loan in an SFHA in a non-participating community if it chooses to do so. Government-guaranteed or insured loans (e.g., SBA, VA, FHA), however, are not permitted to be made in non-participating communities (see 42 USC § 4106(a)).

Nevertheless, institutions should exercise good risk management practices to ensure that making loans on properties that are in an SFHA where no flood insurance is available does not create unacceptable risks in an institution's loan portfolio.

2. Does the Regulation apply to loans purchased from others?

Answer: No. The Regulation lists certain events that trigger its requirements: making, increasing, extending or renewing a designated loan. The purchase of a loan is not an event that requires the purchaser to make a new determination at the time of purchase. However, if the lender becomes aware at some point during the life of the loan that flood insurance is required, then the lender must comply with the Regulation. Similarly, if the lender extends, increases or renews the loan, the Regulation applies.

3. What about table funding programs? Are they treated as originations or as loans purchased from others?

Answer: Loans made through a table funding process will be treated as though the party providing the funds has originated the loan. The funding party must comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

4. How are loans that are now under-insured because of previous insurance limitations to be handled?

Answer: In accordance with the Act, the Federal Insurance Administration has increased the amount of insurance available under the NFIP. Consequently, loans that previously had principal balances in excess of the program limits may now be underinsured. The new insurance limitations went into effect on March 1, 1995. Lenders and servicers must adjust coverage limits at the first renewal date or the first anniversary date following March 1, 1995, if the policy is a multi-year policy. Loans made after March 1, 1995, are subject to the new limits.

5. If the insurable value of the building securing the loan is less than the outstanding balance of the loan, can a lender require the borrower to obtain flood insurance up to the balance of the loan?

Answer: No. The insurable value of the improvements to the real estate that secures the loan governs the amount of insurance that is required. The amount of required insurance coverage is the lesser of the principal balance of the loan(s) or the maximum coverage available under the NFIP. An NFIP policy will not provide insurance coverage for losses in excess of the value of the improvements. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the value of the improvements.

6. How do the flood insurance requirements apply in situations involving loan servicing?

Scenario 1—Loan is originated by a regulated lender and secured by a building on property located in an SFHA in a community in which flood insurance is available under the Act. Borrower is provided appropriate notice and insurance is obtained. Lender services the loan. Loan is subsequently sold to a non-regulated party and servicing is transferred to that party. What responsibilities are imposed on the regulated lender? What if the regulated lender only transfers or sells the servicing rights?

Answer: The lender must comply with all requirements of the Regulation, including making the initial determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. When the loan is sold and servicing is transferred to the new servicer, the lender must provide notice of the identity of the new servicer to FEMA or its designee.

If the lender retains ownership of the loan and only transfers or sells servicing rights to a non-regulated party, the lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the lender as owner of the loan, including escrow of insurance premiums and forced placement (if necessary).

More generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, forced placement and flood hazard determination fee provisions of the Act and Regulation primarily to ensure that they may perform the administrative tasks for the lender, without fear of liability to the borrower for the imposition of unauthorized charges. In addition, the preamble to the Regulation emphasizes that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the lender or from other commonly accepted standards for performance of servicing obligations. The lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

Scenario 2—Loan is originated by a non-regulated lender. Property is located in an SFHA but the lender did not make an initial determination or notify borrower of the need to obtain insurance. Loan is purchased by regulated lender who also services the loan. What are the responsibilities of the regulated lender? What if the regulated lender only purchases the servicing rights?

Answer: If the loan is purchased by the regulated lender, no determination is necessary at that point nor is any notice to FEMA required. If, at some time in the future, the lender becomes aware that the property is located in an SFHA in a community in which flood insurance is available under the Act, it must notify the borrower of that fact and require the borrower to purchase flood insurance. If the borrower does not voluntarily comply, the lender must force place the insurance. If servicing is subsequently sold or transferred, the lender must also notify FEMA or its designee of the identity of the new servicer.

If the regulated lender purchases only the servicing rights to the loan, the lender is only obligated to follow the terms of its servicing contract with the owner of the loan.

7. A loan is secured by multiple agricultural buildings located throughout a large geographic area. Some of the properties are located in an SFHA and others are not. In addition, the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP, and others do not. What are the flood insurance requirements for security properties in this scenario?

Answer: Flood insurance would be required only on those buildings located in an SFHA in which the community participates in the NFIP. A notice of special flood hazards is required for those buildings located in an SFHA whether or not the community participates in the NFIP. The amount of insurance required will depend upon the principal amount of the loan, the value of the buildings located in participating communities and the amount of insurance available under the NFIP.

For example, a loan in the principal amount of $150,000 is secured by 5 buildings, 3 of which are located in SFHAs within participating communities. The properties are non-residential in nature, therefore the maximum amount of insurance available under the NFIP is $500,000 per building. Each of the three buildings located in an SFHA must be covered by flood insurance. The total required amount of insurance for the three buildings would be the lesser of $150,000 or the value of the three buildings with each building insured separately from the other. The amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered by flood insurance.

8. What is the appropriate amount of coverage under federal flood insurance legislation with respect to condominiums, in particular, multi-story condominium complexes?

Answer: Effective October 1, 1994, the Federal Insurance Administration issued a new form of Master Policy for condominiums—the Residential Condominium Building Association Policy (RCBAP) . To meet federal flood insurance requirements, an RCBAP should be purchased in the amount of at least 80% of the replacement value of the building or the maximum amount available under the NFIP (currently $250,000 multiplied by the number of units), whichever is less. For instance, the maximum amount of coverage on a 50 unit condominium building could be up to $12,500,000 ($250,000 x 50). However, if the replacement value of the building was only $10,000,000, the condominium association could purchase a policy of $8,000,000 and not be required to have a co-insurance payment in the event of a flood. The

$8,000,000 of coverage would meet the requirements of the Regulation for all the units within the condominium. A lender should make a similar analysis to determine the amount of coverage for other condominium complexes where flood insurance is required.

When making a loan on a condominium unit located in an SFHA, lenders should determine whether a master policy or similar product, provides adequate flood insurance coverage and is in place at the time the loan is made. Lenders should further ensure that a mechanism is in place (possibly a covenant on the part of the condominium association) that provides for adequate flood insurance coverage for the term of the loan.

9. A lender has a loan secured by a condominium unit in a multi-unit complex whose condominium association allows its existing flood insurance policy to lapse. As a result, there is no flood insurance coverage for the condominium unit. What recourse does the lender have?

Answer: The NFIP does make an individual condominium unit policy available (the Dwelling Form), in addition to association master policies. In this instance, the lender after receiving notice that the association policy has lapsed, must notify the unit owner according to the forced placement procedures to obtain a policy (within 45 days) for the amount of the loan or the maximum amount of coverage available, whichever is less.

III. Exemptions

1. What are the exemptions from coverage?

Answer: There are only two exemptions from the purchase requirements: The first applies to State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if the *original principal balance* of the loan is $5,000 or less, and the *original repayment term* is one year or less. Both of these conditions must be present for the second exemption to apply.

IV. Escrow Requirements

1. The effective date of the escrow requirement was October 1, 1996. Does the escrow requirement apply to applications received before October 1, 1996?

Answer: No. The escrow requirement applies only to loans closed on or after October 1, 1996.

2. Are multi-family buildings or mixed-use properties included in the definition of ''residential improved real estate''? Are escrows required?

Answer: The Regulation states that if the collateral securing the loan meets the definition of ''residential improved real estate'' and the lender requires escrows for other items (e.g., hazard insurance or taxes), then the lender is required to also escrow flood insurance premiums.

Multi-family buildings. Neither the Act nor the Regulation distinguishes whether residential improved real estate is single or multi-family, or whether it is owner or renter-occupied. The preamble to the Regulation indicates that single family dwellings (including mobile homes), two to four family dwellings, and multi-family properties containing five or more residential units are covered under the Act's escrow provisions. If the building securing the loan meets the Regulation's definition of residential improved real estate, and the lender requires the escrow of other items, such as taxes or hazard insurance premiums, the lender is required to also escrow premiums and fees for flood insurance.

Mixed-use properties. The lender should look to the primary use of a building to determine if it meets the definition of ''residential improved real estate.'' For example, a building having a retail store on the ground level with a small upstairs apartment used by the store's owner is generally considered a commercial enterprise and consequently would not constitute a residential building under the definition. Even though the Regulation does not require escrows for flood insurance, the lender may impose such a requirement through contract.

On the other hand, if the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply.

3. When must escrow accounts established for flood insurance purposes be administered in accordance with the escrow rules under Section 10 of RESPA?

Answer: Lenders should look to the definition of ''federally related mortgage loan'' contained in RESPA to see if a particular loan is subject to Section 10. Generally, only loans on one to four family dwellings will be subject to the escrow requirements of RESPA. Consequently, only those escrow accounts established for loans subject to RESPA are required to conform with Section 10 of RESPA. Loans on multi-family dwellings with five or more units are not covered by RESPA requirements.

Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes such as hazard insurance or taxes. This requirement pertains to *any* loan, including those subject to RESPA. The preceding paragraph addresses the requirement for administering loans covered by RESPA. The preamble to the Regulation contains a more detailed discussion of the escrow requirements.

4. Do voluntary escrow accounts established at the request of the borrower, trigger a requirement for the lender to escrow premiums for required flood insurance?

Answer: No. If escrow accounts for other purposes are established at the voluntary request of the borrower, the lender is not required to establish escrow accounts for flood insurance premiums. Examiners should review the loan policies of the lender and the underlying legal obligation between the parties to the loan to determine whether the accounts are in fact voluntary. For example, If the loan policies of the lending institution require borrowers to establish escrow accounts for other purposes and the contractual obligation permits the lender to establish escrow accounts for those other purposes, the lender will have the burden of demonstrating that an existing escrow was not made pursuant to a voluntary request.

5. Will premiums paid for credit life insurance, disability insurance, or similar insurance programs be viewed as escrow accounts requiring the escrow of flood insurance premiums?

Answer: No. Premiums paid for these types of insurance policies will not trigger the escrow requirement for flood insurance premiums.

6. Will escrow-type accounts for multi-family building commercial loans trigger the escrow requirement for flood insurance premiums?

Answer: Various types of accounts are established in connection with commercial purpose real estate loans. These loans typically involve multi-family properties and are substantially different in purpose and type from escrows accounts on single family residences. These involve accounts such as ''interest reserve accounts,'' ''compensating balance accounts,'' ''marketing accounts,'' and similar accounts that may be established by contract between the purchaser and seller of the building (although administered by the lender in some cases). Accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself are not the type of accounts that constitute escrow accounts for the purpose of the Regulation. Escrow accounts for the protection of the property, such as escrows for hazard

insurance premiums or local real estate taxes, are the types of escrows that trigger the requirement to escrow flood insurance premiums.

7. What requirements for escrow accounts apply to properties covered by Residential Condominium Building Association Policies?

Answer: RCBAPs are policies purchased by the condominium association on behalf of the individual unit owners in the condominium. The premiums on the policy are paid by a portion of the periodic dues paid to the association by the condominium owners. When a lender makes a loan on the purchase of a condominium over which a RCBAP is in place and the premiums are paid by dues to the condominium association, the escrow requirement is satisfied. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

V. Required Use of Standard Flood Hazard Determination Form (SFHDF)

1. Does the SFHDF replace the borrower notification form?

Answer: No. The notification form is used to notify the borrower(s) that they are purchasing improved property located in an SFHA. The financial regulatory agencies, in consultation with FEMA, included a revised version of the sample borrower notification form in Appendix A to the Regulation. The SFHDF is used by the lender to determine whether the property securing the loan is located in an SFHA.

2. Must the SFHDF be provided to the borrower? If so, must the borrower sign the form acknowledging receipt?

Answer: While it may be a common practice in some areas for lenders to provide a copy of the SFHDF to the borrower to give to the insurance agent, lenders are neither required nor prohibited from providing the borrower with a copy of the form. Signature of the borrower is not required on the SFHDF.

3. May the SFHDF be used in electronic format?

Answer: Yes. FEMA, in the final rule adopting the SFHDF stated: ''If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form.'' It should be noted, however, that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

4. Section 528 of the Act permits a lender to rely on a previous determination using the SFHDF when it is increasing, extending, renewing or purchasing a loan secured by a building or a mobile home. The Act omits the ''making'' of a loan as a permissible event to rely on a previous determination. May a lender rely on a previous determination for a refinancing or assumption of a loan?

Answer: It depends. If a subsequent loan involving a refinancing or assumption is made on the same property by the same lender who obtained the original determination, and the other requirements contained in Section 528 are met, the lender may rely on the previous determination. Section 528 of the Act requires that a lender may rely on a previous determination only if the original determination was recorded on the SFHDF within the previous seven years and there were no map revisions or updates affecting the security property since the original determination was made. However, a loan refinancing or assumption made by a lender other than the lender who obtained the original determination would constitute ''making'' a new loan, thereby requiring a new determination.

5. If a borrower requesting a home equity loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?

Answer: It depends. Assuming the requirements in Section 528 are met and the lender made the first mortgage, then a new determination would not be necessary. If, however, a lender other than the one that made the first mortgage loan is making the home equity loan, a new determination would be required because this lender would be deemed to be ''making'' a new loan. In any event, the institution will need to determine if the amount of insurance in force is sufficient to cover either the principal balance of all loans (including the home equity loan) or the maximum amount of coverage available on the improved real estate, whichever is less.

VI. Forced Placement of Flood Insurance

1. Is forced placement allowed? What are the procedures?

Answer: The Act and Regulation require a lender to force place flood insurance if all of the following circumstances occur:

- The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;
- The community in which the property is located participates in the NFIP;
- Flood insurance coverage is inadequate or does not exist; and
- The borrower fails to purchase the appropriate amount of coverage.

In order to force place, a lender must notify the borrower of the required amount of flood insurance that must be obtained within 45 days after notification. The notice must also state that if the borrower does not obtain the insurance within the 45 day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower the cost of premiums and fees to obtain the coverage. Standard FNMA/FHLMC documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. FEMA published these procedures in the **Federal Register** on August 29, 1995 (60 FR 44881). Appendix A of the FEMA publication contains examples of notification letters to be used in connection with the MPPP.

2. Can a servicer force place on behalf of a lender?

Answer: Yes. Assuming the statutory prerequisites for forced placement are met, and subject to the servicing contract between the lender and the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

3. When forced placement occurs, what is the amount of insurance required to be placed?

Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (See Section II. Requirement to purchase flood insurance where available.)

VII. Determination Fees

1. When can lenders or servicers charge the borrower a fee for making a determination?

Answer: There are four instances under the Act and Regulation when the borrower can be charged a specific fee for a flood determination:

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination is prompted by FEMA's publication of a

notice or compendia that affects the area in which the security property is located; or

- When the determination results in forced placement of insurance.

Loan or other contractual documents between the parties may also permit the imposition of fees.

2. May charges made for life of loan reviews by flood determination firms be passed along to the borrower?

Answer: Yes. Many flood determination firms provide a service to the lender for conducting a periodic review of the loan during the time it is outstanding to ascertain whether the original determination remains valid. This service is sometimes coupled with the making of the original determination and the fee charged is a composite one for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly within the permissible purpose envisioned by the Act. The agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

Consequently, the agencies also believe that a fee for a life of loan service may be passed along to the borrower. However, because the life of loan fee is based on the ability to charge a determination fee, the monitoring fee may be charged only if the events specified in the answer to question VII.1 occur.

VIII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

1. Does the notice have to be provided to each borrower for a real estate related loan?

Answer: The notice must be provided to a borrower only when the lender determines that the property securing the loan is or will be located in an SFHA. In a transaction involving multiple borrowers, the agencies believe it is only necessary to provide the notice to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided.

2. Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?

Answer: The notice requirement can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home will be located in an SFHA and, if possible, before completion of the loan transaction. In circumstances where time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time.

In the case of loan transactions secured by mobile homes not located on a permanent foundation, the agencies note that such ''home only'' transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions. However, as indicated in the preamble to the Regulation, the agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

3. When is the lender required to provide notice to the servicer of a loan that flood insurance is required?

Answer: Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

4. What will constitute appropriate form of notice to the servicer?

Answer: Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.

5. In the case of a servicer affiliated with the lender, is it necessary to provide the notice?

Answer: Yes. The Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

6. How long does the lender have to maintain the record of receipt by the borrower of the notice?

Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

IX. Notice of Servicer's Identity

1. When a lender makes a designated loan and it will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee?

Answer: FEMA stated in a June 4, 1996 letter, that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the lender's forced placement of a policy), will constitute notice to FEMA when the lender is servicing that loan. In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer.

2. Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?

Answer: The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

- Borrower's Full Name;
- Flood Insurance Policy Number;
- Property Address (including city and state);
- Name of bank or servicer making notification;
- Name and address of new servicer;
- Name and telephone number of contact person at new servicer.

3. Can delivery of the notice be made electronically, including batch transmissions?

Answer: Yes. The Regulation specifically permits transmission by electronic means and a timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

4. If the loan and its servicing rights are sold by the lender, is the lender required to provide notice to the Director or the Director's designee?

Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

5. Is the lender required to provide notice when a servicer other than the

lender sells or transfers the servicing rights to another servicer?

Answer: No. The obligation of the lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, First Financial Institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to First Financial Mortgage Company. First Financial Institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that FEMA can track the loan. If First Financial Mortgage Company later sells the servicing rights to another firm, First Financial Mortgage Company is responsible for notifying the Director's designee of the identity of the new servicer, not First Financial Institution.

6. In the event of a merger of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?

Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

X. Appendix A to the Regulation—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

1. Is use of the sample form of notice mandatory? Can it be revised to accommodate a lender's needs?

Answer: Although lenders are required to provide a notice to a borrower who is purchasing property secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form if they choose. However, a lender-revised form must provide the borrower with at least the minimum information required by the Regulation. Therefore, lenders should consult the Regulation to determine the information needed.

Federal Financial Institutions Examination Council.

Dated at Washington, DC this 16th day of July 1997.

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 97–19133 Filed 7–22–97; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–01–P, 7535–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days the date of this notice appears in the **Federal Register**.

Agreement No.: 203–011330–012.

Title: Information System Agreement.

Parties: P&O Nedlloyd Limited, American President Lines, Ltd., Sea-Land Service, Inc., A. P. Moller-Maersk Line, Crowley Maritime Corporation, Hapag-Lloyd Container Linie GmbH, Orient Overseas Container Line, Inc., Lykes Bros. Steamship Co., Inc., P&O Nedlloyd B.V., Kawasaki Kisen Kaisha, Ltd., Yang Ming Marine Transport Corp., Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed modification revises procedures for the payment of admission fees and annual dues, provides for the suspension of voting privileges for the delinquent payment of annual dues and expulsion from the Agreement for the non-payment of annual dues, provides for the admission of associate members under specified conditions, and provides that P&O Nedlloyd B.V. and P&O Nedlloyd Limited be considered as one member and be entitled to only a single representative and one vote.

By Order of the Federal Maritime Commission.

Dated: July 18, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–19335 Filed 7–22–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–15–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Examination of Barriers to Participant Compliance in a Flexible Sigmoidoscopy Screening Program. Kaiser Foundation, Oakland—New—This is a revision and resubmission of a previously submitted information collection. With colorectal cancer comprising the second highest mortality rate among all U.S. cancers and ranked as the fourth most common form of cancer, the active promotion of population-based screening and early detection is becoming increasingly important. Recognizing the importance of screening, American Cancer Society guidelines and the new US Preventive Services Task Force guidelines recommend colorectal cancer screening for individuals over the age of 50. Still, although early detection of colorectal neoplasms has been effectively demonstrated to significantly reduce morbidity and mortality and associated economic costs, compliance is very low. This three-year study involving investigators at one of the nation's largest Health Maintenance Organizations' research foundation (Kaiser Foundation of Northern California) seeks to identify barriers associated with low compliance in a colorectal cancer screening program utilizing flexible sigmoidoscopy.

Phase I will target and recruit participants from an existing pool of Health Maintenance Organization enrollees who are at a relatively high age-related risk (ages 50–64) for developing colorectal cancers via short survey and invitation to screening. In Phase II, investigators will conduct a telephone survey to identify the relative

impact of economic, psychological, and related factors on participation and non-participation in the mass screening programs. In phase III, investigators will analyze and widely disseminate results of the study via publication in the professional literature. Results will also be made available to participants upon request. Interventions designed to mitigate the barriers identified through this study will be incorporated into future screening efforts and general health education/health promotion efforts.

Participation in this study is voluntary and subsequent follow-up and treatment, if indicated, will be provided at no cost to participants. Informed consent will be obtained where appropriate and oversight will be provided by federal and institutional review. The total annual burden hours are 2,141.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
HMO Enrollees	6165	1	.3473

Dated: July 16, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–19325 Filed 7–22–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0256]

LaserVision Centers, Inc.; Premarket Approval of LaserVision®/VISX Excimer Laser System Model C for Phototherapeutic Keratectomy (PTK) and Photorefractive Keratectomy (PRK)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by LaserVision Centers, Inc., St. Louis, MO, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the stationary LaserVision®/VISX Excimer Laser System Model C for Phototherapeutic Keratectomy (PTK) and Photorefractive Keratectomy (PRK). The device is to be manufactured under an agreement with VISX, Inc., Santa Clara, CA, which has authorized LaserVision Centers, Inc., to incorporate information contained in its approved premarket approval applications (PMA's) for the VISX Excimer Laser System Model C for PTK and for the VISX Excimer Laser System Model C for PRK. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 15, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 22, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. For more information on the data which supported this application, please refer to the summary of safety and effectiveness and labeling for the VISX Excimer Laser System Model C for PTK (under Docket Number 96M–0486) and for the VISX Excimer Laser System Model C for PRK (under Docket Number 97M–0084).

FOR FURTHER INFORMATION CONTACT: Morris Waxler, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION: On June 3, 1996, LaserVision Centers, Inc., St. Louis, MO 63141, submitted to CDRH an application for premarket approval of the stationary LaserVision®/VISX Excimer Laser System Model C for PTK and PRK. The device is a stationary excimer laser which delivers pulses at 193 nanometers wavelength. The device is indicated for PTK in patients with decreased best corrected visual acuity and/or with disabling pain that are the result of superficial corneal epithelial irregularities or stromal scars in the anterior one-third of the cornea. The patients must have failed with alternative treatment options. For safety, the immediate postoperative corneal thickness must not be less than 250 microns. Examples of those conditions that warrant PTK are: (1) Corneal scars and opacity (from trauma and inactive infections), (2) dystrophies (Reis-Buckler's granular and lattice), (3) Thygeson's superficial keratitis, (4) irregular corneal surfaces associated with filamentary keratitis and Salzmann's nodular degeneration, (5) residual band keratopathy after unsuccessful ethylene-diamine-tetra-acetic-acid (EDTA) treatment, and (6) scars subsequent to previous (not concurrent) pterygium excision. In addition, the device is indicated for PRK for a 6.0 ablation zone in patients who are myopic and meet all of the following criteria: (1) 1.0 to 6.0 diopters of myopia with astigmatism of < 1.0 diopters, (2) refractive change is within + 0.5 diopter for 1 year prior to the laser treatment, and (3) 18 years of age or older.

The application includes authorization from VISX, Inc., Santa Clara, CA 95051–0703, to incorporate information contained in its approved PMA's for VISX Excimer Laser System Model C for PTK and for the VISX Excimer Laser System Model C for PRK.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On November 15, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal

hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 22, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 5, 1997.

Joseph A. Levitt,

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

[FR Doc. 97–19247 Filed 7–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Program Requirements and Review Criteria for a Cooperative Agreement for a Center for Health Workforce Distribution Studies: A Federal-State Partnership Cooperative Agreement Program for Fiscal year 1997

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a fiscal year (FY) 1997 Cooperative Agreement for a Center for Health Workforce Distribution Studies: A Federal-State Partnership Cooperative Agreement Program. The cooperative agreement will be funded under the authority of section 792 (42 USC 295k) of the Public Health Service Act, which authorizes research on health professions personnel.

Research and studies for this cooperative agreement program will focus on the workforce distributional aspects of the legislation at the state (one or a few states) level for allied health personnel, dentists, nurses, physicians, and public health personnel as specified below.

A proposed three-year period of support beginning in fiscal year 1997 is anticipated, with approximately $250,000 per year. This is a one time competition and is not expected to be an ongoing cooperative agreement program. Applicants may request up to $250,000 per year in total costs (direct plus indirect costs), for up to three years.

Purpose

The purpose of this cooperative agreement for a Center for Health Workforce Distribution Studies is to support research and analysis at the state level for one state or a few states only, including issues regarding the impact of federal initiatives aimed at improving the training of health professionals and meeting national workforce goals pertaining to:

(1) Allied health data and distributional issues consistent with the (1995) recommendations of the National Commission on Allied Health and in close coordination with the activities of the Allied Health Data Collaborative Project;

(2) Distribution of dentists, with emphasis on trends relating to educational background (for example, those with postdoctoral training in advanced general dentistry and/or public health dentistry) and practice in settings principally serving residents of medically underserved communities;

(3) The designation of nursing shortage areas at the state level and, through a pilot exploration of a model approach, build a methodologic bridge to other states for applicability across the Nation;

(4) The distribution of physicians, with emphasis on underserved areas and specialty services, including, for example OB/GYN, maternal and child health, general surgery, emergency medicine, and mental health; and addressing issues of substitution, using available tools such as the HRSA/BHPr Integrated Requirements Model (IRM), as applicable, and

(5) The establishment of collaboration(s) between schools of public health and state and local public health agencies to assess public health workforce supply and distribution and to develop educational strategies to address imbalances; and to develop the nature of workforce planning for public health personnel at the state level.

The cooperative agreement is to fund either the establishment and the operation of a new research center, or the operation of an existing research of a new research center, for the conduct of such research. The center must conduct high-quality research and disseminate findings to colleagues and policy-makers at the institutional, Federal and state levels.

The successful applicant must have or establish the Center for Health Workforce Distribution Studies as an identifiable entity. This must be more than a set of discrete, investigator-initiated research projects proposed in one application. The center must have a director; a coherent, widely-recognized research agenda; and researchers who function as a team. The principal investigator must be an experienced researcher who will be primarily responsible for the organization and operation of the center and will provide research leadership. The center's researchers must collectively possess multidisciplinary skills, and have experience in health services research. There must be sufficient core staff with significant time commitments to the center, although the center will of necessity share common resources with other components of the applicant institution, including technical, clerical, and administrative personnel, and library and computer resources.

The cooperative agreement funds will be available to provide basic support for the center, including: the development and implementation of the center's research agenda, administrative and research staff support, researcher time (although not necessarily 100% of researcher time), and dissemination of center research products through articles in peer-reviewed journals as well as center-sponsored publications. This cooperative agreement must not be the sole source of support for this type of enterprise. The applicant institution must demonstrate a commitment (including a matching contribution—see ''Program Requirements'' below) to support the organizational and management structure of the center, and its investigators should seek other funds for support of its research agenda.

Substantial Programmatic Involvement

Personnel of the Bureau of Health Professions will have substantial programmatic involvement with the planning, developing and administering of the Center for Health Workforce Distribution Studies and its outputs. The program officer will be assisted by the work in close coordination with program staff of the divisions contributing to this cooperative agreement. Federal guidance and involvement will include:

1. Participating in identification of workforce study priorities;
2. Assisting in the selection of research projects. This includes, but is not limited to, providing substantial guidance on Federal policy-relevant issues, and issues of particular national interest, that require research;
3. Participating in the approval of study protocols and methodologies;
4. Participating in review and selection of sub-contracts awarded under the cooperative agreement. If sub-contracts are awarded via a competitive process, a representative of the Bureau will serve on the review panel which will evaluate applications;
5. Supplying data in areas relevant to studies of the health professions workforce. When data are not directly available from the Bureau of Health Professions, Bureau personnel will assist in identifying sources of data such as other Federal agencies, and other public and private organizations;
6. Assisting with the preparation of project results for publication in peer-reviewed journals;
7. Providing information about numerous Federal programs that impact health workforce studies.

Eligibility

Eligible applicants include public and non-profit private entities. The applicant must bring together allied/dental/medical/nursing/public health schools and state agencies, must have experience in all five component areas, the assessment and evaluation of unmet need/underserved areas, and in issues of non-physician provider substitution, and must have access to the allied and public health workforce data base in the state. Development of a methodology for the assessment of nursing shortage areas and of public health requirements and supply in a state must involve a state agency.

Proposed Program Requirements

The award recipient's institution must share in the cost of the program as follows: For each year funds are awarded under this program, the matching contribution shall be at least one-third of the amount of the Federal award for that year. Up to 50% of the recipient's matching contribution may be in the form of in-kind donations of faculty time, staff time, use of computers or other shared resources.

Applicants are urged to submit applications that address specific objectives of HRSA/BHPr. Health workforce surveillance reveals significant gaps in the Nation's health workforce ability to meet the population's needs. In some cases, these gaps are exacerbated by market forces. The BHPr attempts to address these in its four health workforce goals to improve the distribution, diversity, supply, and competence/quality. Specifically,

Distribution: there has been little progress in reducing the number of underserved areas, and access to generalist providers varies widely across states and counties;

Diversity: few health professions reflect the diversity of the Nation's population, also there is strong evidence that underrepresented minority providers are more likely to serve vulnerable populations;

Supply: shortages of some allied and public health providers coincide with a surfeit of specialist physicians

Competance: most training is hospital-based and ill-suited to ambulatory health care delivery, which occurs in an increasingly managed care environment and requires skills in providing cost-effective quality care. Also, an aging population created an unmet need for geriatric training.

Proposed Review Criteria

Applications for this cooperative agreement will be evaluated on the basis of the following criteria:

(1) The qualification and achievements of the proposed center's principal investigator and senior researchers, including level of productivity and quality of research in health workforce issues;

(2) Demonstration of an understanding of the particular subject areas of health professions workforce research that are relevant to Federal policies and evidence of ability to manage research in such areas;

(3) The appropriations of the time commitments of the principal investigator and senior researchers;

(4) The strength of the applicant's plan to actively promote dissemination of research findings to all health professionals involved in health services research and to relevant national and state policy makers;

(5) The appropriateness of the proposed budget;

The planned level of commitment to the center from the applicant institution, as evidenced by specific plans for the type of financial support that will be offered, and for support of the organizations structure of the center. Evidence of a prior institutional commitment to generalizable research in health workforce studies will also be sought;

(7) The past success and the future potential of the proposed center's researchers in receiving funding from other sources; and

(8) The likely effectiveness of the organizational and management arrangements to operate the proposed center.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Academic and Community Partnerships

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Additional Information

Interested persons are invited to comment on the proposed program requirements and review criteria. The comment period is 30 days. All comments received on or before August 22, 1997 will be considered before the final program requirements and review criteria are established. Written comments should be addressed to: Mr. B. Jerald McClendon, Director, Office of Research and Planning, Bureau of Health Professions, Health Resources and Services Administration, Parklawn

Building, Room 8–47, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments receive will be available for public inspection and copying at the Office of Research and Planning, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Requests

Application materials are available on the World Wide Web at address: ''http://www.hrsa.dhhs.gov/bhpr/grants.html''. In fiscal year 1997, the Bureau of Health Professions (BHPr) will use Adobe Acrobat to publish the grants documents on the Web page. In order to download, view and print these grants documents, you will need a copy of Adobe Acrobat Reader. This can be obtained without charge from the Internet by going to the adobe Web page (''http://www.adobe.com'') and downloading the version of the Adobe Acrobat Reader which is appropriate for your operating system, i.e., Windows, Unix, Macintosh, etc. A set of more detailed instructions on how to download and use the Adobe Acrobat Reader can be found on the BHPr Grants Web page under ''Notes on this WWW Page.

For applicants who are unable to access application materials electronically, a hard copy will be provided by contacting the HRSA Grants Application Center. The Center may be contacted by:

Telephone Number: 1–888–300–HRSA.

FAX Number: 301–309–0579.

Email Address: hrsa.gac@ix.netcom.com.

Completed applications should be returned to: Grant Management Officer (CFDA#), HRSA Grants Applications Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850.

Questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray, Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, *Telephone:* (301) 443–6857, *FAX:* (301) 443–6343, *Email:* dmurray@hrsa.dhhs.gov

If additional programmatic information is needed, please contact: Herbert Traxler, Ph.D., Office of Research and Planning, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–47, 5600 Fishers Lane, Rockville, Maryland 20857, *Telephone:* (301) 443–6662 or 3148, *FAX:* (301) 443–8003 *Email:* htraxler@hrsa.dhhs.gov

Paperwork Reduction Act

The standard application form PHS 398, Application for Public Health Service Grant, will be used for this program and has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0925–0001.

The deadline date for receipt of applications is August 22, 1997. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

Dated: July 16, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–19246 Filed 7–22–97; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Cancellation of Advisory Committee Meeting

SUMMARY: Public notice was given in the **Federal Register** on June 13, 1997, Volume 62, No. 114, on pages 32360–32361 that the Center for Substance Abuse Prevention's Drug Testing Advisory Board (DTAB) would be meeting on August 5–6, 1997. This meeting has been canceled and will be rescheduled at a later date.

Date: July 17, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–19244 Filed 7–22–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–1020]

Notice of Intent To Prepare a Management Plan and an Environmental Impact Statement; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The Bureau of Land Management wishes to advise the public of a correction of a phone number previously published in the **Federal Register** in the document announcing a notice of intent to prepare a management plan and associated environmental impact statement for the Grand Staircase-Escalante National Monument, Kane and Garfield Counties, Utah.

SUPPLEMENTARY INFORMATION: Please note that the telephone number stated in **FOR FURTHER INFORMATION CONTACT** in the **Federal Register** of July 8, 1997 (62 FR 36570), is incorrect. The correct telephone number for Pete Wilkins, Planning Coordinator of the Grand Staircase-Escalante National Monument, is (801) 865–5100.

Dated: July 10, 1997.

Thom Slater,

Acting Deputy State Director, Division of Natural Resources.

[FR Doc. 97–18680 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–51]

Iditarod Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Iditarod Advisory Council Meeting

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Tuesday, August 19, 1997, from 8 a.m. to 5 p.m. The purpose of the meeting is to discuss the formation of a non-profit foundation to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the Campbell Creek Science Center off Abbott Loop Road in Anchorage, AK.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1–2 p.m. Written comments may be

submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson at (907) 271–5555.

Date: July 10, 1997

Tom Allen,

State Director.

[FR Doc. 97–19502 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–07–0777–52]

Notice of Meeting of the Utah Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Utah Resource Advisory Council (RAC).

SUMMARY: On August 18 and 19, 1997, Utah's Resource Advisory Council will take a first-hand look at the agency effort to rehabilitate the fire-scarred areas of Cove Fort and the Little Sahara Recreation Area. The Council will discuss the issue of fire rehab within the State. The RAC will receive a preliminary report, from the subgroup of the RAC, of their initial findings during this meeting.

A public comment period is scheduled for August 19, from 8:00 to 8:30 a.m. in the Fillmore Office of the Bureau of Land Management, 35 East 500 North, Fillmore, Utah. RAC meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Any member of the public interested in attending the fire rehabilitation tour or desiring an opportunity to address the Council should contact Sherry Foot, Special Programs Coordinator, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

Date: July 17, 1997.

G. William Lamb,

Utah BLM State Director.

[FR Doc. 97–19324 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–07–1610–00]

Availability of Proposed Plan Amendment Regarding Areas of Critical Environmental Concern for the Box Elder Resource Management Plan, Salt Lake District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed plan amendment.

SUMMARY: The Bureau of Land Management, Salt Lake District, has completed an Environmental Analysis/Finding of No Significant Impact of the Proposed Plan Amendment to the Box Elder Resource Management Plan (RMP). This notice of availability addresses designation of two new Areas of Critical Environmental Concern (ACEC) and proposes to amend two existing ACECs.

DATES: The protest period for the proposed ACECs will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before August 22, 1997.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Environmental Specialist/Planner, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah, 84119, (801) 977–4317. Copies of the Environmental Assessment and Proposed Plan Amendment are available for review at the Salt Lake District Office.

SUPPLEMENTARY INFORMATION: The proposed plan amendment designates two new Areas of Critical Environmental Concern, Salt Wells Wildlife Habitat Area (WHA) and Blue Springs WHA, and amends two existing ACECs, Donner Creek/Bettridge Creek, and Central Pacific Railroad Grade. Salt Wells WHA, 5,389 public areas, and Blue Springs WHA, 5,715 public areas, provide crucial habitat for numerous wildlife species. The Donner/Bettridge Creek ACEC would be increased by a 40 acre parcel, and all current management decisions would apply to this parcel. The Central Pacific Railroad Grade ACEC would be modified to encompass the grade for a width of 400 feet, for 90 miles from Golden Spike National Historical Site (Golden Spike) to Lucin, from Golden Spike on the west to Stinky Springs on the east (13.5 miles), and 232 acres of land which involves the Union Pacific Railroad grade. This ACEC designation protects the historical integrity and associated values of the grades, townsites, and artifacts located in the vicinity of the grades.

The following management prescriptions are proposed for each ACEC.

Salt Wells ACEC Prescriptions

Grazing: The livestock grazing season of use would be changed to the winter period, if the permittee agrees to the change. If sping grazing continues, the area should be fenced to create pastures for the Salt Wells Allotments. If grazing permits are relinquished within the Salt Wells WHA, these areas would be closed to grazing to protect the wetland values.

Mineral Development: Oil & gas leasing would be subject to Category 3 (No Surface Occupancy) stipulation. A land withdrawal from the operation of the public land laws and location and entry under the United States Mining laws is proposed.

Off Highway Vehicle (OHV): The Salt Wells WHA (excluding the county roads) would be ''closed'' to OHV use.

Blue Springs ACEC Prescriptions

Land Tenure Adjustments: Acquired lands within the state managed Public Shooting Grounds Wildlife Management Area would only be available for disposal to the Utah Division of Wildlife Resources through an exchange where similar wildlife habitat or habitat of T&E or sensitive wildlife species is acquired by the BLM.

Grazing: Grazing would continue at current levels, class of livestock and season of use as that described in the Box Elder RMP for those lands located within the Blue Springs WHA. If grazing permits are relinquished within the Blue Springs WHA, these areas would be closed to grazing to protect the wetland values.

Mineral Development: Oil & gas leasing would be subject to Category 3 (No Surface Occupancy) stipulation. A land withdrawal from the operation of the public land laws and location and entry under the United States Mining laws is proposed.

Off Highway Vehicle (OHV): The Blue Springs WHA would be ''closed'' to OHV use.

Donner/Bettridge Creek ACEC Prescriptions

This parcel is located adjacent to the existing ACEC and would be managed according to the goals and objectives of the existing management plan, and have the same restrictions or limitations to

the use of those lands as described in the respective plan.

OHV Use: The parcel would be limited to OHV use on designated roads and trails year round.

Central Pacific Railroad Grade ACEC Prescriptions

The expansion of the ACEC would be managed according to the goals and objectives of the existing management plan, and have the same restrictions or limitations to the use of those lands as described in the respective plan.

Livestock: Livestock grazing would continue at current levels, class of livestock and season of use as that described in the Box Elder RMP for those lands located within the wetlands portions of the eastern CPR grade.

If spring grazing continues, the area should be fenced to create pastures for the Golden Spike Allotment. If grazing permits are relinquished within the wetland areas of the lands associated with the eastern and western portions of the CPRR/UPR grades, then these areas would be closed to grazing to protect the wetland values. Grazing would only then be authorized if the grazing could be used to achieve management objectives.

Mineral Development: Oil & gas leasing would be subject to Category 3 (No Surface Occupancy) stipulation. A land withdrawal from the operation of the public land laws and location and entry under the United States Mining laws is proposed.

Off Highway Vehicle (OHV): OHV use would be limited to existing roads and trails throughout the year on the east and west portions of the CPRRG which do not involve wetlands, while the wetland portions of the CPRRG would be ''closed'' to OHV use.

Dated: July 9, 1997.

Linda Colville,

Associate State Director, Utah.

[FR Doc. 97–18683 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: G7–0236]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Meridian

Oregon

T. 11 S., R. 1 E., accepted April 28, 1997
T. 9 S., R. 3 E., accepted June 2, 1997
T. 6 S., R. 45 E., accepted July 7, 1997
T. 26 S., R. 2 W., accepted June 3, 1997
T. 38 S., R. 4 W., accepted July 7, 1997
T. 36 S., R. 7 W., accepted June 2, 1997
T. 24 S., R. 7 W., accepted June 2, 1997

Washington

T. 22 N., R. 4 W., accepted June 16, 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: July 11, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–19270 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Alaska Region, Beaufort Sea Lease Sale 170

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period for Draft Environmental Impact Statement.

On May 21, 1997, Minerals Management Service (MMS) announced in the **Federal Register** (Vol. 62, No. 98, pages 27774–5) the availability of the draft Environmental Impact Statement (EIS) for proposed oil and gas lease sale 170 in the Beaufort Sea. That announcement indicated that comments on the draft EIS be submitted to MMS by July 18, 1997.

The MMS has received several inquiries requesting an extension of time to submit comments on this EIS. In response to these requests, MMS is extending the comment period for this EIS to July 31, 1997.

Dated: July 18, 1997.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 97–19398 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Greater Yellowstone Interagency Brucellosis Committee

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Greater Yellowstone Interagency Brucellosis Committee (GYIBC). Notice of this meeting is voluntary and is provided for the public and other Agency information.

MEETING DATE AND TIME: August 05–08, 1997. Information/Education and Technical Subcommittees to meet August 5, 1997, 10:00 a.m.–5:00 p.m., and August 6, 1997, 8:00 a.m.–5:00 p.m. The Executive Committee will meet August 7, 1997, 8:30 a.m.–4:30 p.m., and August 8, 1997, 8:30 a.m.–12:00 p.m.

ADDRESSES: Holiday Inn-Westbank, 475 River Parkway, Idaho Falls, Idaho, (208) 523–8000.

SPECIFIC AGENDA ITEMS INCLUDE: Reports from the Technical and the Information/Education Subcommittees, findings of the recent Wyoming station review, discussion on the structure, role, and function of the recently approved Research Subcommittee, an update on the Yellowstone National Park/Montana Environmental Impact Statement (EIS) preferred alternative. The meeting will be open to the public. However,

facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may address the Executive Committee by indicating such on the sign-in sheet available at the beginning of the meeting each day. Minutes of the meeting will be available for public inspection *after* Executive Committee approval by contacting the office of the GYIBC Administrative Assistant at the National Park Service, Denver, Colorado (address listed below).

SUPPLEMENTARY INFORMATION: The GYIBC was formed by the governors of Wyoming, Montana and Idaho, and the Secretaries of Interior and Agriculture to address the issues surrounding brucellosis in the Greater Yellowstone Area (GYA). The group's goal is to protect and sustain the free-ranging elk and bison populations in the GYA and to protect the public interests and economic viability of the livestock industry in Idaho, Montana and Wyoming, while planning for the elimination of brucellosis in the GYA by the year 2010.

FOR FURTHER INFORMATION CONTACT:

Dr. Dan Huff, GYIBC Chairman & Assistant Field Director, Natural Resources & Sciences, Intermountain Regional Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2651

or

Ms. Dawn Carey, GYIBC Administrative Assistant, Colorado Plateau Support Office, CPSO–E, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 987–6649.

Date: July 2, 1997.

Dan Huff,

GYIBC Chairman.

[FR Doc. 97–19330 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Policy Statement Concerning Access to National Park Service Property for the Siting of Mobile Services Antennas

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service (NPS) is publishing for review the policy statement that sets forth the instructions and requirements by which the NPS will comply with Section 704(c) of the Telecommunications Act of 1996, consistent with the implementing procedures established by President Clinton and the General Services Administration (GSA).

DATES: Written comments will be accepted until August 22, 1997.

ADDRESSES: Send comments to Dick Young, Special Park Uses Program Manager, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690.

FOR FURTHER INFORMATION CONTACT: Dick S. Young at 757–898–7846.

BACKGROUND INFORMATION: An August 10, 1995, Executive Memorandum from the President, directed the heads of all departments and agencies to facilitate access to Federal property for the purpose of siting mobile services antennas. On February 8, 1996, the President signed the Telecommunications Act of 1996 (47 U.S.C. 332). Section 704(c) of the Act requires the President to develop procedures by which federal departments and agencies may make available federal properties, rights-of-way, and easements for wireless telecommunication services. On March 29, 1996, the GSA issued a notice in the **Federal Register** (61 FR 14100) of general procedures for implementing the provisions of Section 704(c) of the Act. These general procedures, together with the Executive Memorandum, are applicable to all Executive departments and agencies. Congress provided additional instructions in the Conference Report on FY 1997 Interior Department appropriations, saying that the NPS ''should promulgate rules which ensure that the public has the opportunity to participate fully and comment on the issuing of permits, rights-of-way or easements for any telecommunications facility placed in any unit of * * * the National Park System * * *''

Through their actions, Congress and the President have established a compelling Federal interest in promoting the efficient implementation of the new telecommunications technology. The NPS will therefore follow the requirements and intent of the Act, the Executive Memorandum and the GSA procedures, while also recognizing its responsibility for complying with provisions of the National Park Service Organic Act, the National Environmental Policy Act (NEPA), the National Historic Preservation Act of 1966 (NHPA''), and other statutes applicable to the operation of units of the National Park System. NPS implementation of Section 704(c) of the Act will take into account language in the House Report on the bill which eventually became law, stating ''The Committee recognizes, for example, that use of the Washington Monument, Yellowstone National Park or a pristine wildlife sanctuary, while perhaps prime sites for an antenna and other facilities, are not appropriate and use of them would be contrary to environmental, conservation, and public safety laws.''

Instructions and Requirements

A. General

1. Park Superintendents will accept, evaluate, and approve or deny applications for wireless telecommunications facility (WTF) sites pursuant to this Director's Order. This Director's Order supersedes the procedures set forth in the Deputy Director's memorandum of May 10, 1996.

2. While this Director's Order establishes the instructions and requirements regarding WTF sites within park areas, the Associate Director for Park Operations and Education will prescribe procedures in the Special Park Uses Handbook to standardize the way park areas respond to WTF site applications.

3. Park Superintendents will work with WTF site applicants to satisfy the requirements of the Telecommunications Act, this Director's Order, the procedures found in the Special Park Uses Handbook, the park's authorizing legislation and applicable plans, and other applicable statutes, regulations, and policies.

4. Park Superintendents who expect to receive a high number of WTF applications will conduct a Comprehensive Assessment for wireless communications. This Assessment will determine the extent to which, and the most fair, reasonable, nondiscriminatory and efficient means by which, the parks can accommodate demands for WTF sites without derogating park resources, values or purposes. This assessment may be done prior to or immediately after receiving applications, and should explore the feasibility of co-location of facilities.

5. Park Superintendents who do not expect to receive a high number of WTF site applications may either conduct a Comprehensive Assessment as above, or may process applications and prepare permits for a WTF site without first having prepared a Comprehensive Assessment, provided that an EA and any required follow up documents are prepared in conjunction with the review of the application. All such EA's or

follow up documents must address the impact of the proposed WTF site, and the cumulative impact in relation to it, any existing, or future sites.

6. The public will be given the opportunity to participate fully and comment on applications for the use of any park property for a WTF Site. Public participation will be accomplished as part of the Comprehensive Assessment process, as part of the NEPA process, or using any method normally used by the park for this purpose.

B. Processing WTF Applications

1. Applicants for WTF sites must submit an application for a right-of-way permit pursuant to Title 36, Code of Federal Regulations, Part 14, and the Special Park Uses Handbook, including the payment of the application fee. After receipt of a complete application, the Superintendent will undertake an initial evaluation, as required by GSA procedures, within 60 days, and provide a determination in writing to the applicant. Documentation of this decision will become a part of the written administrative record.

2. If the Superintendent determines, based on the initial evaluation of the WTF application, that use of the proposed site would result in a derogation of park resources, values or purposes, the Superintendent will reject the application and provide the applicant with a written notification of the reasons for rejection.

3. If the Superintendent determines, based on the initial evaluation of the WTF application, that the use of the proposed site may be appropriate, pending further evaluation, the applicant will be notified of that determination in writing. In addition, Superintendents should make every effort to notify other FCC licensees authorized to provide the same type of wireless communications service within the park's boundaries. This is necessary to determine if multiple parties may be interested in sites within the park. Further evaluation requirements may include:

(a) Compliance with NEPA, NHPA, and other applicable laws and regulations, and the Special Park Uses Handbook.

OR

(b) If the Superintendent has determined that there is a need for a Comprehensive Assessment for reasons including but not limited to multiple applicants, or the proposed sites are in sensitive areas of the park, then the Superintendent, in addition to the compliance required under 3(a) above, should address the matter by preparing a Comprehensive Telecommunications Site Assessment (CTSA) pursuant to the procedures in the Special Park Uses Handbook. The Superintendent will provide the applicant with further information about how the CTSA will be prepared, the estimated timetable, and the estimated additional costs which the applicant may incur because of this procedure.

(c) In all cases, the NPS will work with the applicant to process these applications in a timely manner, dependent upon the degree of complexity.

4. After all required compliance documents have been satisfactorily completed and approved, and the requested use is still determined to not be in derogation of the resources, values and purposes of the park, the Superintendent will prepare the appropriate right-of-way permit(s) for signature by the applicant and the Regional Director as provided for in 36 CFR Part 14. If, upon final review, the Superintendent does determine that the requested use is in derogation of the resources, values and purposes of the park, the Superintendent will reject the request and provide the applicant with the reasons for rejection. The Superintendent will also provide the applicant with the procedures for appealing that rejection.

More detailed information, including additional background and required procedures, can be found in the Special Park Uses Handbook, Appendix 8, Exhibit 6, ''Rights-of-Way for Telecommunications Facilities.''

Dated: July 16, 1997.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 97–19327 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 22, 1997.

EFFECTIVE DATE: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, (1006–0009), Washington D.C. 20503, Telephone (202) 395–7340. A copy of your comments should also be directed to the Bureau of Reclamation, D–7924, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION OR A COPY CONTACT: Bureau of Reclamation's Information Collection Officer, Susan Rush, at (303) 236–0305 extension 462 or by Internet at infocoll@usbr.gov.

SUPPLEMENTARY INFORMATION:

Title: Private Rental Survey.

Abstract: The forms are to be used to establish and revise rental, utility, and related service charges for occupants of Government-furnished quarters. Information is collected from property owners, property managers, and real estate offices.

Bureau Form Numbers: 7–2226 and 7–2227.

OMB Approval Number: 1006–0009.

Frequency: Each of 14 regions are surveyed every fifth year; this equates to two to three regions surveyed each year.

Description of Respondents: Individual property owners and small businesses or organizations (real estate managers or property managers).

Estimate of Burden: An average of 12 minutes for form 7–2226, and 10 minutes for form 7–2227.

Estimated Annual Responses: 3,000.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 590 hours.

Reclamation will display a valid OMB control number on the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration. The public is being requested to comment on:

a. Whether the collection of information necessary for the proper performance of the functions of Reclamation, including whether the information will have practical utility;

b. The accuracy of Reclamation's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Reclamation's intention to seek renewal of this information collection and request for public comment was published in **Federal Register** notice 62 FR 16605, Apr. 7, 1997. No comments were received in response to this notice.

Stan Dunn,

Director, Administrative Service Center.

[FR Doc. 97–19265 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–237]

Production Sharing: Use of U.S. Components and Materials in Foreign Assembly Operations, 1993–96 (U.S. Imports Under Production-Sharing Provisions of Harmonized Tariff Schedule Heading 9802)

AGENCY: United States International Trade Commission.

EFFECTIVE DATE: July 17, 1997.

ACTION: Opportunity to submit written statements in connection with the report which covers developments in 1996.

SUMMARY: The Commission has prepared and published annual reports on production sharing under this series since 1986. The Commission plans to publish the next report in December 1997, which will cover U.S. import data on production sharing for 1993–96.

Alternative collection methods for production-sharing trade data are being considered by various government entities to improve this statistical review, as noted in the recently published report. Comments and suggestions regarding this issue are welcome in written submissions as specified below. The latest report for the period 1992–1995 (USITC Publication 3032, April 1997) may be obtained from the ITC's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov). A printed report may be requested by contacting the Office of the Secretary at 202–205–2000, or by fax at 202–205–2104.

FOR FURTHER INFORMATION CONTACT: Questions about the production-sharing report may be directed to Ralph J. Watkins, Office of Industries (202–205–3492). For information on legal aspects, please contact Mr. William W. Gearhart, Office of General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background: The initial notice of institution of this investigation was published in the **Federal Register** of September 4, 1986 (51 F.R. 31729). The report has been published in the current series under investigation No. 332–237 annually since December 1986. The report, originally entitled ''Imports Under Items 806.30 and 807.00 of the Tariff Schedules of the United States, 1982–85,'' has undergone a number of changes in the title to reflect the adoption of the Harmonized Tariff Schedule (HTS) and modifications to the applicable provisions of that schedule.

As in past years, the report will provide an analysis of developments in U.S. imports under the production-sharing provisions of the HTS, focusing on shifts in trade and product mix as well as trends by principal country sources and industry groups. The report will also assess U.S. production generated as a result of foreign assembly, the use of production sharing by foreign manufacturers, the effect of the North American Free Trade Agreement (NAFTA) on U.S. parts producers, and developments in the global integration of specific industries. The report will also contain a special section on the use of maquiladoras in Mexico by Canadian companies and their relationship with parts producers in the United States.

Written Submissions: No public hearing is planned. However interested persons are invited to submit written comments on developments in production-sharing trade. Commercial or financial information that a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 2, 1997. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000.

List of Subjects: Production sharing, foreign assembly, infrastructure, globalization, apparel, NAFTA.

Issued: July 18, 1997

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–19399 Filed 7–22–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–372]

The Economic Implications of Liberalizing APEC Tariff and Nontariff Barriers to Trade

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public symposium.

EFFECTIVE DATE: July 14, 1997.

SUMMARY: Following receipt on November 1, 1996 of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–372, *The Economic Implications of Liberalizing APEC Tariff and Nontariff Barriers To Trade,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The USTR asked that the Commission provide an objective, critical report, based on a symposium to be held by the Commission, on the identification and assessment of the impact of nontariff barriers (NTBs) to trade and investment in APEC and on the general equilibrium modeling of APEC trade liberalization. As indicated in the notice published in the **Federal Register** of December 4, 1996 (61 F.R. 64365) announcing institution of the investigation, the symposium schedule was to be published in a subsequent **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Nancy Benjamin, Office of Economics, at (202) 205–3125. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Schedule for Symposium

Evaluating APEC Trade Liberalization: Tariff and Nontariff Barriers, September 11–12, 1997, U.S. International Trade Commission, Washington, DC 20436

September 11, 1997—9:00 am—Opening remarks by Chairman Miller

9:15 am
1. Trade Policy Measures
Magnus Blomström, Stockholm University, Regional Integration and Foreign Direct Investment
David Richardson, Syracuse University, Institute for International Economics, Competition Policy
Break 10:30 am
10:45 am
2. Deregulation
Cliff Winston, The Brookings Institution, U.S. Industry Adjustment to Economic Deregulation
Claude Barfield, American Enterprise Institute, Deregulation and Trade
Break 12:00 pm
1:30 pm
3. Case Studies A
Mark Tilton, Purdue University, Japanese Group Boycotts and Closed Government Procurement as Barriers to Trade
Diane Manifold, U.S. International Trade Commission, Japanese Corporate Activities in Asia: Implications for Market Access
2:45 pm
4. Case Studies B
Yu-Shi Mao, Chairman of the Unirule Institute of Econ, China's Nontariff Trade Barriers, and An Inquiry to the Calculation of Consumers' Surplus Under Partial Equilibrium
U.S. International Trade Commission Staff, The Measurement of Non-Tariff Barriers for Selected Sectors in Selected East Asian Countries
Break 3:45 pm
4:00 pm
5. Business Networks
James E. Rauch, University of California, San Diego, The Impact of Overseas Chinese Networks on APEC Trade
Gary Hamilton, University of Washington, Organization of the Taiwanese and South Korean Economies: A Comparative Analysis (with Robert Feenstra)
September 12, 1997—9:15 am
6. Services and Intellectual Property Rights
Walter Park, American University, Patent Policies as Nontariff Barriers to Trade
Malcolm Bosworth, Productivity Commission, Australia, Measuring Trade Barriers on Services within APEC
Break 10:30 am
10:45 am
7. Public Practices
Simon Evenett, University of Michigan Business School, The Effect of Liberalizing Government Procurement Practices on Intra-APEC Trade Flows
Praveen Dixit, Economic Research Service, USDA, State Trading in Agriculture: an Analytical Framework (with Tim Josling)
1:30 pm
8. General Equilibrium Modeling of Trade Liberalization A
Innwon Park, National University of Singapore, Strategic Interest of ASEAN in Regional Trading Groups in the Asia-Pacific Region (with Tan Kong Yam, and Mun Heng Toh)
Philippa Dee, Productivity Commission, Australia, Modeling Services Trade Barriers in APEC
2:45 pm
9. General Equilibrium Modeling of Trade Liberalization B
Shujiro Urata, Waseda University, Japan, The Impact of Deregulation in the Service Sector in Japan: A General Equilibrium Approach (with Hiroki Kawai)
International Trade Commission Staff, Liberalizing Services Trade in APEC
Break 3:45 pm
4:00 pm
10. Dynamic Modeling of Trade Liberalization
Dale Jorgenson, Harvard University, Trade Policy and Economic Growth (with Mun S. Ho)
Warwick McKibbin, The Australian National University, Trade and Financial Effects of APEC Trade Liberalization

Symposium: The symposium will be held on September 11 and 12, 1997 at the U.S. International Trade Commission, 500 E Street, SW., Washington DC. Members of the public may attend the symposium and there will be an opportunity for brief technical comments on the papers from the audience. Those who would like to attend the symposium are requested to indicate their intention by sending a letter or fax to the Office of Economics, U.S. International Trade Commission (fax no. 202–205–2340) by September 2, 1997.

Issued: July 14, 1979.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–19400 Filed 7–22–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Raytheon Company and Texas Instruments Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court in the District of Columbia, Civil No. 1:97CV01515.

On July 2, 1997, the United States filed a Complaint alleging that the proposed acquisition by Raytheon Company of the Defense Systems and Electronics Unit of Texas Instruments Inc. (''DS&E'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint further alleges that the acquisition by Raytheon of DS&E would lead to a monopoly in X-band high power amplifier monolithic microwave integrated circuits (''MMICs''). The proposed Final Judgment, filed the same time as the Complaint, requires Raytheon to divest the MMICs business of DS&E.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514–2841. Copies of these

materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: July 2, 1997.

For Plaintiff United States of America:

Willie L. Hudgins, *Esquire, (D.C. Bar #37127, U.S. Department of Justice, Antitrust Division, Litigation II, Suite 3000, Washington, D.C. 20005, (202) 307–0924.*

For Defendant Raytheon Company:

Robert D. Paul, *Esquire, (D.C. Bar #416314),* Michael S. Shuster, *Esquire, White & Case, 601 13th St., N.W., Washington, D.C. 20005–3807, (202) 626–3614.*

For Defendant Texas Instruments Inc.:

Kathleen L. Ferrell, *Esquire, (D.C. Bar #367971),* Paul Bartel, *Esquire, Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, (212) 450–4760.*

It is so ordered by the Court, this _____ day of July, 1997.

_____, United States District Judge.

Parties Entitled to Notice of Entry of Order

United States of America:

Department of Justice Antitrust Division, J. Robert Kramer II, Esq., Willie L. Hudgins, Esq., Suite 3000, 1401 H Street, N.W., Washington, D.C. 20530.

Counsel for Raytheon Company:

Robert D. Paul, Esq., Michael S. Shuster, Esq., White & Case, 601 13th St., N.W., Washington, D.C. 20005–3807.

Counsel for Texas Instruments Incorporated:

Paul W. Bartel, Esq., Thomas P. Ogden, Esq., Kathleen L. Ferrell, Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017.

Hold Separate and Partition Plan Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate and Partition Plan Stipulation and Order:

A. ''DoD'' means the Department of Defense.

B. ''DOJ'' means the Antitrust Division of the Department of Justice.

C. ''GaAs'' means gallium arsenide.

D. ''MMIC'' means a Monolithic Microwave Integrated Circuit.

E. ''MMIC Business'' means the GaAs foundry and MMIC business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the GaAs Operations Group, Microwave GaAs Products Business Unit, the MMIC component of the Microwave Integrated Circuits Center of Excellence, the MMIC research and development component of the System Components Laboratory, and associated contracting, quality assurance and control personnel located in the North Building and East Building of TI's Expressway site, all employees listed in attachment A, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the MMIC Business including but not limited to: all real property (owned or leased), including interests in the North Building and East Building, used in the operation of that MMIC Business, including research and development activities; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the MMIC Business; all licenses, permits and authorizations issued by any governmental organization relating to that MMIC Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the MMIC Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the MMIC Business;

2. all intangible assets purchased by Raytheon relating to the MMIC Business, including but not limited to all patents, licenses and sublicenses, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information TI provides to its own employees, customers, suppliers, agents or licensees; and

3. all research data concerning historic and current research and development efforts relating to the MMIC Business, including designs of experiments, and the results of unsuccessful designs and experiments.

F. ''Raytheon'' means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massaschusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, directors officers, managers, agents, and employees.

G. ''TI'' means defendant Texas Instruments, Inc., a Delaware corporation with its headquarters and principal place of business in Dallas, Texas, and its successors, assigns subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and directors, officers, managers, agents and employees.

II. Objectives

The Final Judgment filed in this case is meant to ensure Raytheon's prompt divestiture of the MMIC Business for the purposes of creating a viable competitor in development, production and sale of MMICs used in advance military radars and to remedy the effects that the United States alleges would otherwise result from Raytheon's proposed acquisition of the MMIC Business of TI. This Hold Separate and Partition Plan Stipulation and Order ensures the timely and complete transfer of the MMIC Business and maintains the MMIC Business as an independent, viable competitor until divestiture is complete.

III. Hold Separate Provisions

A. Raytheon and MMIC Business shall expressly undertake to compete in the MMIC market in the exercise of their best judgments and without regard to the merger agreement, as if they were in all respects separate and independent business entities.

B. Raytheon shall preserve, maintain, and operate the MMIC Business purchased by Raytheon from TI as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Raytheon. Raytheon shall not coordinate its production, marketing or sale of gallium arsenide products with that of the MMIC Business, except to the limited extent provided in III(D) below. Within fifteen (15) days of the entering of this Order, Raytheon will inform the DOJ and DoD of the steps taken to comply with this provision.

C. Raytheon shall take all steps necessary to ensure that the MMIC Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the development, production and sale of gallium arsenide products, including MMICs, that the management of the MMIC Business will not be influenced by Raytheon, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the MMIC Business, including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Raytheon. Raytheon's influence over the MMIC Business shall be limited to that necessary to carry out Raytheon's obligations under this Order and the Final Judgment. Nothing in the provision, however, shall prevent Raytheon from obtaining information customarily provided in due diligence to allow Raytheon to determine what technology, intellectual property, and know-how it may desire to license from the purchaser of the MMIC Business and to determine whether to contract with the purchaser of the MMIC Business to produce product for Raytheon.

D. Raytheon shall provide and maintain sufficient working capital to maintain the MMIC Business as a viable, ongoing business, consistent with current business plans.

E. Raytheon shall provide and maintain sufficient lines and sources of credit to maintain the MMIC Business as a viable, ongoing business.

F. Raytheon shall maintain on behalf of the business of the MMIC Business in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the business on a monthly and quarterly basis.

G. Raytheon shall use all reasonable efforts to maintain and increase sales of the MMIC Business, and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, internal research and development funding, sales, marketing, and support for MMIC and module products produced by the MMIC Business.

H. Raytheon shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

I. Raytheon shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

J. Nothing in this Order shall prohibit Raytheon from contracting with the MMIC Business, pursuant to arm's length negotiations, to have the MMIC Business produce product for Raytheon from any excess capacity at the foundry of the MMIC Business.

K. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any MMIC Business employee who, on the date of entry of this Order, works for the MMIC Business. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of the MMIC Business. Defendants shall not hire any individual who, on the date of entry of this Order, was an employee of the MMIC Business, unless such individual has a written offer of employment from a third party for a like position.

L. Until such time as this Order is terminated, the MMIC Business shall be managed by Thomas Cordner. Mr. Cordner shall have complete managerial responsibility for the MMIC Business, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Cordner is unable to perform his duties, Raytheon shall appoint from the current management of the MMIC Business, subject to the DOJ's approval, a replacement within ten (10) working days. Should Raytheon fail to appoint a replacement acceptable to the DOJ within ten (10) working days, the DOJ, after consultation with DoD, shall appoint a replacement.

M. Raytheon shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

N. This Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

IV. Partition Plan

A. Defendants are hereby ordered and directed to present a plan to partition the facilities of the MMIC Business from the facilities of Raytheon and TI to the DoD and DOJ, within twenty-eight (28) days of the entry of this Order. In the event the parties are unable to agree on a partition plan within twenty-eight (28) days of the entry of this Order, DOJ, in consultation with DoD, may appoint an expert to devise such a partition plan. The expert shall have the right, in its sole discretion, to allocate space and equipment between Raytheon, TI and the MMIC Business. Defendants shall not object to the partitioning plan devised by the expert on any grounds other than the expert's malfeasance. The expert shall serve at the cost and expense of Raytheon. Raytheon shall take no action to interfere with or impede the expert's partition plan.

B. Raytheon shall ensure to the satisfaction of DoD that the operations of the MMIC Business, including its support of DoD programs, not be disrupted.

Dated: July 2, 1997.

For Plaintiff United States of America:

Willie L. Hudgins, *Esquire, (D.C. Bar # 37127), U.S. Department of Justice, Antitrust Division, Litigation II, Suite 3000, Washington, D.C. 20005, (202) 307–0924.*

For Defendant Raytheon Company:

Robert D. Paul, *Esquire, (D.C. Bar # 416314),* Michael S. Shuster, *Esquire, White*

& Case, 601 13th St., N.W., Washington, D.C. 20005–3807, (202) 626–3614.

For Defendant Texas Instruments Inc.:

Kathleen L. Ferrell, *Esquire, (D.C. Bar # 367971),* Paul Bartel, *Esquire, Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, (212) 450–4760.*

It is so ordered by the Court, this _____ day of July, 1997.

_____, United States District Judge.

Parties Entitled to Notice of Entry of Order

United States of America:
Department of Justice Antitrust Division, J. Robert Kramer II, Esq., Willie L. Hudgins, Esq., Suite 3000, 1401 H Street, N.W., Washington, DC 20530.

Counsel for Raytheon Company:
Robert D. Paul. Esq., Michael S. Shuster, Esq., White & Case, 601 13th St., N.W., Washington, DC 20005–3807.

Counsel for Texas Instruments Incorporated:
Paul W. Bartel, Esq., Thomas P. Ogden, Esq., Kathleen L. Ferrell, Davis, Polk & Wardell, 450 Lexington Ave., New York, NY 10017.

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Raytheon Company (''Raytheon'') and Texas Instruments, Inc. (''TI''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the gallium arsenide foundry and MMIC business of TI to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the development, production and sale of X-band high power amplifier MMICs;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C § 18).

II. Definitions

As used in this Final Judgment:

A. ''DoD'' means the Department of Defense.

B. ''DOI'' means the Antitrust Division of the Department of Justice.

C. ''GaAs'' means gallium arsenide.

D. ''MMIC'' means a Monolithic Microwave Integrated Circuit.

E. ''MMIC Business'' means the GaAs foundry and MMIC business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the GaAs Operations Group, Microwave GaAs Products Business Unit, the MMIC component of the Microwave Integrated Circuits Center of Excellence, the MMIC research and development component of the System Components Laboratory and associated contracting, quality assurance and control personnel located in the North Building and East Building of TI's Expressway site, all employees listed in attachment A, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the MMIC Business including but not limited to: all real property (owned or leased), including interests in the North Building and East building, used in the operation of that MMIC Business, including research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the MMIC Business; all licenses, permits and authorizations issued by any governmental organization relating to that MMIC Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the MMIC Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the MMIC Business;

2. all intangible assets purchased by Raytheon relating to the MMIC Business, including but not limited to all patents, licenses and sublicenses, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information TI provides to its own employees, customers, suppliers, agents or licensee; and

3. all research data concerning historic and current research and development efforts relating to the MMIC Business, including designs of experiments, and the results of unsuccessful designs and experiments.

F. ''Module Business'' means the transmit and receive module business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the R/F Microwave Manufacturing Group, Microwave Module & Subsystems Center for Excellence Microwave Packaging Center for Excellence, Microwave Laboratories and Support Systems Center for Excellence, Technology Programs Customer Product Team, module component of the Microwave Integrated Circuits Center for Excellence, and associated contracting, quality assurance and control personnel located in the North Building of TI's Expressway site, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the Module Business including but not limited to: all real property (owned or leased), including interests in the North Building, used in the operation of that Module Business, including research and development activities; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the Module Business; all licenses, permits and authorizations issued by any governmental organization relating to that Module Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the Module Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the Module Business;

2. all intangible assets purchased by Raytheon relating to the Module Business, excluding information relating to TI's MMIC Business, and otherwise including but not limited to all patents,

licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of material and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information TI provides to its own employees, customers, suppliers agents or licensee; and

3. all research data concerning historic and current research and development efforts relating to the Module Business, including design of experiments, and the results of unsuccessful designs and experiments.

G. ''Raytheon'' means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massachusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

H. ''TI'' means defendant Texas Instruments, Inc., a Delaware corporation with its headquarters and principal place of business in Dallas, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents and employees.

III. Applicability

A. The provisions of this Final Judgment apply to Raytheon, its successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Raytheon shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of a lesser business unit that includes Raytheon's business of developing and producing MMICs, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Raytheon is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the MMIC Business to an acquirer acceptable to DOJ and DoD in their sole discretion.

B. Raytheon shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. DOJ in its sole determination, in consultation with DoD, may extend the time period for any divestiture an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Raytheon promptly shall make known, by usual and customary means, the availability of the MMIC Business described in this Final Judgment. Raytheon shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Raytheon shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentially assurances, all information regarding the MMIC Business customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work product privilege Raytheon shall make available such information to the DOJ at the same time that such information is made available to any other person.

D. Raytheon shall permit prospective purchasers of the MMIC Business to have reasonable access to personnel and to make such inspection of the physical facilities of the MMIC Business and any and all Financial, Operational, or other documents and information customarily provided as part of a due diligence process.

E. Raytheon shall not take any action that will impede in any way the operation of the MMIC Business.

F. Unless both DOJ and DoD otherwise consent in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire MMIC Business, operated in place pursuant to the Hold Separate and Partition Plan Stipulation and Order, and be accomplished by selling or otherwise conveying the MMIC Business to a purchaser in such a way as to satisfy DOJ and DoD, in their sole discretion, that the MMIC Business can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the development, production and sale of MMICs. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to DOJs and DoD sole satisfaction: (1) Has the capability and intent of competing effectively in the development, production and sale of MMICs for advanced DoD radar systems; (2) has the managerial, operational, and financial capability to complete effectively in the development, production and sale of MMICs for advanced DoD radar systems; (3) is eligible to receive applicable DoD security clearances; and (4) that none of the terms of any agreement between the purchaser and Raytheon give Raytheon the ability unreasonably to raise the purchasers costs, to lower the purchasers' efficiency, or otherwise to interfere in the ability of the purchaser to complete effectively. Subject to these provisions, nothing in this Final Judgment shall prohibit TI from seeking to re-acquire the MMIC Business from Raytheon.

G. Nothing in this Final Judgment shall prevent Raytheon and the purchaser of the MMIC Business from entering into a contract under which the purchaser would produce product for Raytheon using any capacity of the MMIC Business not required to support DoD programs. In addition, nothing in this Final Judgment shall prevent Raytheon from licensing technology or know-how from the purchaser.

H. For a period two years from the filing of the Complaint in this matter, defendants shall not solicit to hire any individual who, on the date of the filing of the Complaint in this matter, with an employee of the MMIC Business, For a period of two years from the filing of the Complaint in this matter, defendants shall not hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the MMIC business unless such individual has a written offer of employment from a third party for alike position.

I. Raytheon shall comply with all agreements with DoD regarding the protection of information related to classified programs.

J. Raytheon shall not charge to DoD any costs directly or indirectly incurred in complying with this Final Judgment.

V. Appointment of Trustee

A. In the event that Raytheon has not divested the MMIC Business within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DOJ, in consultation with DoD, to effect the-divestiture of the MMIC Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the MMIC Business described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divesture at the best price then

obtainable upon a reasonable effort by the trustee, subject to the provision of sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested the Module Business; in such event all of the obligations and of Raytheon under Section IV of this Final Judgment shall apply to the Module Business as well. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Raytheon any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the truest to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the DOJ and DoD, and shall have such other powers as this Court shall deem appropriate. Raytheon shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Raytheon must be conveyed in writing to DOJ and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Raytheon, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Raytheon and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Raytheon shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to affect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Raytheon shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Raytheon shall permit bona fide prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DOJ.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Raytheon or the trustee, whichever is then responsible for effecting the divestiture, shall notify DOJ and DoD of the proposed divestiture. If the trustee is responsible, it shall similarly notify Raytheon. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DOJ and DoD of such notice, DOJ, in consultation with DoD, may request from Raytheon, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Raytheon and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the DOJ has been provided the additional information requested from Raytheon, the proposed purchaser, and any third party, whichever is later, DOJ and DoD shall each provide written notice to Raytheon and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If DOJ and DoD provide written notice to Raytheon and the trustee that they do not object, then the divestiture may be consummated, subject only to Raytheon's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that DOJ and DoD do not object to the proposed purchaser or upon objection by DOJ or DoD, a divestiture proposed under Section IV or Section V may be consummated. Upon objection by Raytheon under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Raytheon shall deliver to DOJ and DoD an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such

affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Raytheon has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by DOJ to information provided by Raytheon, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Raytheon shall deliver to DOJ and DoD an affidavit which describes in detail all actions Raytheon has taken and all steps Raytheon has implemented on an on-going basis to preserve the MMIC Business pursuant to Section VIII of this Final Judgment and the Hold Separate and Partition Order entered by the Court. The affidavit also shall describe, but not be limited to, Raytheon's efforts to maintain and operate the MMIC Business as an active competitor, maintain the management, staffing, research and development activities, sales, marketing and pricing of the MMIC Business, and maintain the MMIC Business in operable condition at current capacity configurations. Raytheon shall deliver to DOJ and DoD an affidavit describing any changes to the efforts and actions outlined in Raytheon's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Raytheon shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Raytheon shall take all steps necessary to comply with the Hold Separate and Partition Plan Stipulation and Order entered by this Court and to preserve the assets of the Module Business. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Financing

Raytheon is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of DOJ.

X. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Raytheon made to its principal offices, shall be permitted:

1. Access during office hours of Raytheon to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Raytheon, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of Raytheon and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Raytheon's principal offices, Raytheon shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate and Partition Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Raytheon to DOJ or DoD, Raytheon represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Raytheon marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by DOJ or DoD to Raytheon prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Raytheon is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further order and directions as may be necessary or appropriate for the construction or carrying out this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated_____, 1997.

_____, United States District Judge.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 2, 1997, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Raytheon Company (''Raytheon'') of the Defense Systems and Electronics Unit (''DS&E'') of Texas Instruments (''TI'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Raytheon and TI are the only two firms that are now in a position to develop and produce an essential input required in state-of-the-art military radar systems that will cost the Department of Defense about $10 billion. These inputs are X-band high power amplifier monolithic microwave integrated circuits (''MMICs''). Raytheon is also a leading producer of radar systems. TI, on the other hand, is an independent supplier of MMICs, often supplying them to Raytheon's radar system competitors.

As described in the Complaint, since X-band high power amplifier MMICs are purchased by domestic radar producers for inclusion in weapon systems sold to the Department of Defense, and there are no foreign producers to which domestic radar producers could reasonably turn to purchase these MMICs, the relevant geographic market is the United States.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Raytheon from acquiring DS&E.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Raytheon to complete its acquisition of DS&E, but require a divestiture and other terms that will preserve competition in the relevant market. This settlement consists of a Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Raytheon to divest, within one hundred and eighty (180) calendar days after the filings of the Complaint in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the MMIC Business (as defined in the Final Judgment) of DS&E to an acquirer acceptable to the Antitrust Division of the Department of Justice (''DOJ'') and the Department of Defense (''DoD''). TI's MMIC Business includes its commercial and defense MMICs, a gallium arsenide foundry, and all tangible and intangible assets used by TI in the operation of its MMIC Business. Raytheon is also required to divest the Module Business (as defined in the Final Judgment) of DS&E if a trustee deems the sale of this business is necessary to perfect a sale of the MMIC Business.

Until such divestiture is completed, the terms of the Hold Separate and Partition Plan Stipulation and Order entered into by the parties apply to ensure that the MMIC Business of DS&E shall be maintained as an independent competitor from Raytheon.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Raytheon is a Delaware corporation headquartered in Lexington, Massachusetts. Raytheon produces aircraft, guided missiles, space vehicles, and defense electronics equipment. It develops and produces high power amplifier MMICs for military radars as its Advanced Device Center in Andover, Massachusetts. In 1996, Raytheon reported total sales of about $12 billion. Raytheon is also a leading designer and producer of radar systems.

TI is a Delaware corporation headquartered in Dallas, Texas. In 1996, TI reported total sales of about $13 billion. Its DS&E unit produces guided missiles, electro-optical systems, and defense electronics equipment. DS&E develops and produces high power amplifier MMICs for military radars through its R/F Microwave Business Unit at a facility in Dallas, Texas. In 1996, DS&E reported total sales of about $1.3 billion.

On January 4, 1997, Raytheon entered into an agreement with TI to purchase DS&E. This transaction, which would, in part, take place in the highly concentrated high power amplifier MMIC market, precipitated the government's suit.

B. MMIC Market

High power amplifier MMICs are solid state semiconductor components (commonly referred to as ''chips'') made of gallium arsenide and used in active electronically scanned array (''AESA'') radars MMICs are designed to operate within specified frequency ranges or bands of the microwave spectrum. Military AESA radars demand the highest performance MMICs typically those operating in that part of the spectrum called the X-band, because this band offers the best combination of all-weather capability and ability to detect low-level targets. Because of the importance of the X-band high power amplifier MMIC to the performance of an AESA radar, the performance of these MMICs is important selection criterion among competing radar systems.

Raytheon has produced more high power amplifier MMICs and modules than any other firm, and TI is the recognized leader in developing high power amplifier MMICs. The two companies are the only firms capable of developing and producing the high power amplifier MMICs required for military radar bids scheduled for the next two to three years. In the next two to three years, radar programs worth over $10 billion will be competed. The radars for these programs will all require X-band high power amplifier MMICs. TI and Raytheon are the only firms that have established production processes and proven manufacturing capability for these high power amplifier MMICs.

Raytheon's acquisition of TI's DS&E, including the MMICs Business, would have eliminated competition in the development, production, and sale of X-band high power amplifier MMICs for military radars being developed over the next two to three years. The proposed acquisition would have resulted in a single supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

The acquisition also likely would have resulted in a lessening of competition in the market for military radars. Raytheon is not only a supplier of high power amplifier MMICs but is also a major supplier of the radar systems of which these devices are critical components. Prior to announcement of the acquisition. TI had teamed with other radar systems suppliers to develop MMICs that met the required specifications for DoD weapon systems. If it acquired the MMIC Business, Raytheon would have controlled access to all currently viable high power amplifier MMICs. Without access to the latest high power amplifier MMICs, a radar manufacturer would be at a serious disadvantage for upcoming military radar competitions.

Successful entry into the production and sale of high power amplifier MMICs is difficult, time consuming, and costly. Entry requires advanced technology, skilled engineers, and costly customized equipment. A new gallium arsenide foundry costs $50–100 million and takes at least two years to construct. A potential entrant would have to engage in difficult, expensive, and time consuming research to develop designs and production processes that can economically and reliably produce high power amplifier MMICs. These designs and production processes must be perfected in order to bid successfully for a military radar program.

Because the high power amplifier MMIC is a crucial input of the radar system, there are no reasonable substitutes to which customers could switch in the event of a small, but significant and non-transitory price increase.

C. Harm to Competition As A Consequence of the Acquisition

Raytheon's acquisition of DS&E's MMIC Business would eliminate

competition in the research, development, and production of high power amplifier MMICs necessary to military weapons systems in the United States.

If Raytheon acquired the MMIC Business of DS&E, the current two producers of high power amplifier MMICs in the United States would be reduced to one. Entry by a new company would not be timely, likely or sufficient to prevent harm to competition.

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the innovation, development, production, and sale of high power amplifier MMICs for military radars in the United States would be lessened substantially; actual and future competition between Raytheon and TI in the development, production and sale of high power amplifier MMICs for military radars in the United States will be eliminated; prices for high power amplifier MMICs for military radars in the United States would likely increase; and competition generally in development, production and sale of military radars in the United States would be lessened substantially.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of DS&E's MMIC Business by Raytheon.

The proposed Final Judgment provides that Raytheon must divest, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the MMIC Business of DS&E to an acquirer acceptable to the DOJ and DoD. If defendants fail to divest the MMIC Business, a trustee (selected by DOJ in consultation with DoD) will be appointed. The trustee will be authorized to sell, in his or her sole discretion, the MMIC Business. In addition, the trustee shall have the right, in his or her sole discretion, to include in the package of assets to be divested the Module Business, if sale of the Module Business is necessary to perfect a sale of the MMIC Business.

The Final Judgment provides that Raytheon will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Divestiture of the MMIC Business preserves competition because it will restore the high power amplifier MMIC market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor. Divestiture will keep at least two producers of high power amplifier MMICs in the market competing for upcoming AESA radar programs, which will preserve and encourage ongoing competition in product innovation and development, production, and sales. Divestiture will also prevent radar system manufacturers from being foreclosed from a critical input and thus will preserve competition in upcoming military radar programs.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.** Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Raytheon and TI. The United States could have brought suit and sought preliminary and permanent injunctions against Raytheon's acquisition. The United States also considered a settlement involving the licensing of MMIC technology to one or more firms. The United States determined, however, that such a proposal would not fully protect competition for important radar projects over the next several years.

United States is satisfied that the divestiture of the described assets and the other terms specified in the proposed Final Judgment will encourage viable competition in the research, development, and production of high power amplifier MMICs. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The divestiture of the MMIC Business and the other proposed terms will restore the high power amplifier MMIC market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgment in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is the public interest.'' In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail. 15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conduction this injury, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trace Cas ¶61.508, at 71.980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660,666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also, Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the pubic in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest,*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainly of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

J. Robert Kramer II, Chief, Litigation II Section, PA Bar # 23963; William L. Hudgins, Assistant Chief, Litigation II Section, DC Bar # 37127; and

Janet Adams Nash, Kevin C. Quin, Stacy Nelson, Laura M. Scott, Nancy Olson, Tara M. Higgins, Charles R. Schwidde, Robert W. Wilder, Melanie Sabo,

Trail Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Suite 3000, Washington, D.C. 20530, 202–307–0924, 202–307–6283 (Facsimile).

Dated: July 2, 1997.

[FR Doc. 97–19315 Filed 7–22–97; 8:45 am]

BILLING CODE 4410–11–M

[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillete Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel,* 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co.,* supra, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CAD Framework Initiative, Inc.

Notice is hereby given that, on May 1, 1997 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CAD Framework Initiative, Inc. (''CFI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Compass Design Automation, San Jose, CA, has reinstated its membership in CFI. SGS Thompson Microelectronics, Argate Brianza, ITALY; CADIS Inc., Boulder, CO; Concurrent CAE Solutions, Inc., Santa Clara, CA; I.C. Master (a division of Hearst Business Publishing/UTP), Garden City, NY; and Synapticad, Inc., Blacksburg, VA, have joined CFI as Corporate Members. Corporate Member High Level Design Systems, Inc., was acquired by Cadence Design Systems, Inc., San Jose, CA.

On December 30, 1988, CFI filed its original notification pursuant to Section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 1989 (54 Fed. Reg. 10456). A correction notice was published on April 20, 1989 (54 Fed. Reg. 16013).

The last notification was filed with the Department on November 7, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 29, 1997 (62 FR 23266).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–19312 Filed 7–22–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Geothermal Power Organization

Notice is hereby given that, on May 29, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Geothermal Power Organization (''GPO'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Pacific Gas and Electric Company, San Francisco, CA; CE Hold Company, Omaha, NE; Barber-Nichols, Inc., Arvada, CO; Douglas Energy Company, Inc., Placentia, CA; Material Integrity Solutions, Inc., Berkeley, CA; and Two-Phase Engineering and Research, Inc., Santa Rosa, CA.

The purpose of this venture will be to foster cooperation among industry, academia, and government for research and development of geothermal energy conversion technology. The objectives of this venture will be achieved by providing a forum for evaluating proposals for industry projects related to geothermal energy conversion technology; for providing the Department of Energy (''DOE'') with information on geothermal energy conversion technology; for advising the geothermal industry, academic organizations, national labs, and other research-oriented groups on issues related to geothermal energy conversion technology; and for facilitating the industrial development of laboratory and research results related to geothermal energy conversion technology.

Participation in this joint venture will remain open to qualified entities. The GPO intends to file additional written notifications disclosing all changes in membership. Information regarding membership in the GPO may be obtained from Carl Pacquin, Pacific Gas and Electric Company, 2302 Camino Ramon, San Ramon, CA 94583.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–19314 Filed 7–22–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Industrial Information Infrastructure Protocols Consortium

Notice is hereby give that, on June 9, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Industrial Information Infrastructure Protocols Consortium (''NIIIP'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organization has joined NIIIP: Hughes Defense Communications, Fort Wayne, IN. The following organizations have withdrawn their membership from NIIIP: Texas Instruments Inc.; Magnavox Electronics Systems Company; Teligent; and CAD Framework Initiative.

No other changes have been made in either the membership or planned activities of NIIIP. Membership remains open and NIIIP intends to file additional written notifications disclosing all changes in membership.

On September 15, 1994, NIIIP consortium filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act of February 1, 1995 (60 FR 6294).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–19313 Filed 7–22–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on June 6, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of the venture are as follows: ASCI–American Communications Services, Inc., Annapolis Junction, MD; Iona Technologies, Dublin, Ireland; MetaSolv Software, Inc., Dallas, TX; OpCom Solutions Inc., Nepean, Ontario, Canada; and Tellabs Operations, Inc., Lisle, IL are Corporate Members. Andersen Consulting, Washington, DC; Audilog, St. Quentin Yvelines, Cedex, France; Bosch Telecom, Inc., Gaithersburg, MD; Consafe Infotech, Malmoe, Sweden; Evolving Systems, Inc., Englewood, Co; Expersoft Corporation, Reston, VA; GN Nettest, Broendby, Denmark; Information & Graphics System, Inc., Boulder, CO; Lumos Technologies, Inc., Los Angeles, CA; SK Telecom Co., Ltd., Taejon, Korea; Telecom Finland, Tele, Finland; and Vector Enterprise Connectivity, Gavteng, South Africa are Associate Members. Dynamic Consulting International, Berrocales Del Jarama, Spain; Gate-Net Associates, Inc., Attleboro, MA; and Mason Communications, Manchester, England are affiliate Members.

No other changes have been made since the last notification filed with the Department in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on March 10, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 1997 (62 FR 26569).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–19311 Filed 7–22–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN: 1218–AB58

Standards Advisory Committee on Metalworking Fluids

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of establishment and appointment of members to the Metalworking Fluids Standards Advisory Committee.

SUMMARY: The Secretary of Labor has established a committee to advise the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) on the appropriate action(s) to take to protect workers from the hazards associated with occupational exposure to metalworking fluids. This standards advisory committee will provide collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved. Those chosen to serve on this committee have been drawn from industry, labor, professional organizations, academia and government agencies. The committee members represent those interested in, or significantly affected by, any action the Agency may take as a result of this inquiry.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: U.S. Department of labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Advisory Committee, Room N–3718, 200 Constitution Avenue, NW, Washington, D.C. 20210. Phone: (202) 219–7111.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Infante, Directorate of Health Standards Programs, Office of Standards Review, OSHA, (202) 219–7111.

SUPPLEMENTARY INFORMATION: In December 1993, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) petitioned OSHA to take emergency regulatory action to protect workers from the risks of occupational cancers and respiratory illnesses associated with exposure to metalworking fluids. Occupational exposure to metalworking fluids was identified by the Agency and its stakeholders as an issue worthy of Agency action during OSHA's Priority Planning Process in 1994. Subsequently, the National Advisory Committee on Occupational Safety and Health (NACOSH) recommended that OSHA form a Standards Advisory Committee (SAC) to address the health risks caused by occupational exposure to metalworking fluids. The Assistant Secretary accepted the recommendation of NACOSH. On August 29, 1996 OSHA published a **Federal Register** notice of intent to form a Standards Advisory Committee for Metalworking Fluids and asked the public for recommendations of individuals with suitable experience or expertise to serve on this advisory committee (61 FR 45459).

Section 7(b) of the Occupational Safety and Health Act requires that advisory committees have a balanced membership, including individuals appointed to represent the interests of affected employers and employees, as well as Federal and State safety and health organizations and professional organizations.

Committee Membership

Appointees to the committee include representatives from labor, industry, academia and government agencies. The appointees represent groups interested in, or affected by, the outcome of this proceeding. The following is a list of Committee members and their affiliations.

Employee Representatives

David Day—International Association of Machinists and Aerospace Workers
James Frederick—United Steelworkers of America
Arthur McGee—Local Union 599 of the United Automobile, Aerospace and Agricultural Implement Workers of America
Frank Mirer—The United Automobile, Aerospace and Agricultural Implement Workers of America
David Wegman—University of Massachusetts Lowell, Department of Work Environment

Industry Representative

David Burch—Precision Machined Products Association
John Cox—National Tooling & Machining Association
John Howell—Castrol Industrial North America, Inc.
Henry Lick—Ford Motor Company
Frank White—Organization Resources Counselors, Inc.

Federal and State Representatives

Henry Anderson—Wisconsin Bureau of Public Health
Dennis O'Brien—National Institute for Occupational Safety and Health

Academic/Professional Representatives

Maura Sheehan (Chairperson)—West Chester University, Department of Health
Lee Newman—National Jewish Center for Immunology and Respiratory Medicine
Daniel Teitelbaum—Medical Toxicology & Occupational Medicine Corporation

Alternative Representatives

These persons will serve on the Committee should one of the members listed above be unable to complete his or her term.

For Employees:

William Shortell—Connecticut Council on Occupational Safety and Health

For Industry:

Kenneth Kushner—The Timken Company

Public Participation

Interested persons are invited to attend and participate in the Committee's meetings. These meetings will be announced by notice in the **Federal Register.**

Authority: This document was prepared under the direction of Greg Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, pursuant to Sections 6(b)(1) and (7)(b) of the Occupational Safety and Health Act of 1970, the Federal Advisory Committee Act, 5.U.S.C.App.2, and 29 CFR 1911.11.

Signed at Washington, D.C., this 17th day of July, 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–19331 Filed 7–22–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

New Mexico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for

Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act.

Identical Standards

By letter dated July 26, 1994, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, former Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follow: Amendment to 1910.1200, 1926.59, and 1928.25, Hazard Communication (59 FR 6169–6184, dated 2/9/94); Amendment to 1910, Subpart I, Personal Protective Equipment, Subpart R, Special Industries, and Subpart S, Electrical (59 FR 4435–4476, dated 1/31/94); Amendment to 1910, Subpart I, Personal Protective Equipment (59 FR 16360–16364, dated 4/6/94); and Amendment to 1926, Subpart Z, Toxic and Hazardous Substances (59 FR 215, dated 1/3/94).

These standards, contained in New Mexico Occupational Health and Safety Regulations OHSR 200 (General Industry), OHSR 300 (Construction), and OHSR 400 (Agriculture), were promulgated on July 8, 1994 and July 9, 1994, in accordance with applicable State law.

The subject standards became effective August 13, 1994, and August 21, 1994, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

By letter dated July 11, 1995, from Sam A. Rogers, Bureau Chief, to Emzell Blanton, Jr., Regional Administrator, and incorporated as part of the plan, New Mexico submitted documentation pertaining to the recodification of its Occupational Health and Safety Regulations. General Industry standards are now codified as 11 NMAC 5.2 [formerly OHSR 200]; Construction Industry standards are now codified as 11 NMAC 5.3 [formerly OHSR 300]; and Agriculture standards are now codified as 11 NMAC 5.4 [formerly OHSR 400]. In addition, the State submitted State standards identical to Federal standards as follow: Amendments to 1910.19, Special Provisions for Air Contaminants (59 FR 41057, dated 8/10/94); Amendments to 1910.120, Hazardous Waste Operations and Emergency Response (59 FR 43270–43275, dated 8/22/94); Addition of 1910.266, Logging Operations (50 FR 51741–51748, dated 10/12/94); Amendments to 1910.269, Electric Power Generation, Transmission, and Distribution, and Electric Protective Equipment (59 FR 33660–33664, dated 6/30/94; 59 FR 40729, dated 8/9/94; and 59 FR 51748, dated 10/12/94); Amendments to 1910.1001, Occupational Exposure to Asbestos (59 FR 41057–41080, dated 8/10/94); Addition of 1910.1201, Retention of DOT Markings, Placards, and Labels (59 FR 36700, dated 7/19/94); Addition of 1926.61, Retention of DOT Markings, Placards, and Labels (59 FR 36700, dated 7/19/94); Amendments to 1926.65, Hazardous Waste Operations and Emergency Response (59 FR 43275–43280, dated 8/22/94); Amendments to 1926, Safety Standards for Fall Protection in the Construction Industry (Subpart E (Means of Egress), Subpart H (Materials Handling, Storage, Use, and Disposal), Subpart M (Fall Protection), Subpart N (Cranes, Derricks, Hoists, Elevators, and Conveyors), Subpart P (Excavations), and Subpart V (Power Transmission and Distribution)) (59 FR 40729–40753, dated 8/9/94); Amendments to 1926.1101, Occupational Exposure to Asbestos (59 FR 41131-41162, dated 8/10/94); and Amendment to 1928.21, Applicable Standards in 29 CFR Part 1910 (59 FR 36700, dated 7/19/94, and 59 FR 51748, dated 10/12/94).

These standards, contained in New Mexico Occupational Health and Safety Regulations 11 NMAC 5.2, 11 NMAC 5.3, and 11 NMAC 5.4, were promulgated on April 21, 1995, in accordance with applicable State law.

The subject standards became effective May 26, 1995, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

By letter dated June 18, 1996, from Sam A. Rogers, Bureau Chief, to Emzell Blanton, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follow: 29 CFR 1910, General Industry Standards, with Federal promulgation date through July 1, 1995; Amendment to 1910.266, Logging Operations (60 FR 47035–47037, dated 9/8/95); Amendment to 1910.1025, Lead (60 FR 52859, dated 10/11/95); Amendment to 1910.272, Grain Handling Facilities (61 FR 9583–9584, dated 3/8/96); Amendments to 1910.133, Eye and Face Protection, 1910.135, Hand Protection, and 1910.136, Foot Protection (61 FR 19548, dated 5/2/96); 29 CFR 1926, Construction Standards, through July 1, 1995; and Corrections to 1926.1101, Asbestos (60 FR 36044, dated 7/13/95, and 60 FR 50411-50413, dated 9/29/95).

These standards, contained in New Mexico Occupational Health and Safety Regulations 11 NMAC 5.2 and 11 NMAC 5.3, were promulgated on June 14, 1996, in accordance with applicable State law.

The subject standards became effective July 15, 1996, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

By letter dated February 17, 1997, from Sam A. Rogers, Bureau Chief, to Emzell Blanton, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follow: Correction to 1910.136, Foot Protection (61 FR 21228, dated 5/9/96); Amendment to 1910.1001, Asbestos (61 FR 43457, dated 8/23/96); Amendments to 1910.19, Special Provisions for Air Contaminants, Amendments to 1910.1000, Air Contaminants, and Addition of 1910.1052, Methylene Chloride (62 FR 1600–1618, dated 1/10/97); Corrections to 1926.416, General Requirements, and 1926.417, Lockout and Tagging of Circuits (61 FR 41738–41739, dated 8/12/96); Amendment to 1926.1101, Asbestos (61 FR 43458–43459, dated 8/23/96); Amendment and Corrections to 1926, Subpart L, Scaffolding (61 FR 46104–46131, dated 8/30/96, and 61 FR 59831–59832, dated 11/25/96); and Addition of 1926.1152, Methylene Chloride (62 FR 1619, dated 1/10/97).

These standards, contained in New Mexico Occupational Health and Safety Regulations 11 NMAC 5.2 and 11 NMAC 5.3, were promulgated on February 14, 1997, in accordance with applicable State law.

The subject standards became effective March 16, 1997, pursuant to

New Mexico State Law, Sections 50–9–1 through 50–9–25.

Substantially Identical Standards

By letter dated October 2, 1986, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, former Regional Administrator, and incorporated as part of the plan, the State submitted OHS Regulation 402, Field Sanitation, which adopted OSHA's proposed 1984 Field Sanitation standard. The State standard was promulgated on June 12, 1986, and went into effect on July 23, 1986, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

In May 1987, OSHA published a final Field Sanitation standard, 29 CFR 1928.110, which extended coverage to mushroom harvesting operations, and added a training requirement provision. On October 26, 1987, in response to OSHA's revised standard, the State resubmitted its earlier version of the Field Sanitation standard, and was informed that the mushroom harvesting and training requirement provisions of the standard must be addressed either by amending the standard, or through administrative action.

On February 5, 1993, New Mexico submitted documentation attesting to the fact that there is no mushroom harvesting industry in the State, and that the training requirements have been implemented through administrative action.

Independent State Standard

By letter dated October 2, 1986, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, former Regional Administrator, New Mexico submitted a State-initiated standard on Hoes for Weeding and Thinning Crops, OHSR 401. The standard was promulgated on June 12, 1986, and went into effect on July 23, 1986, in accordance with New Mexico State Law, sections 50–9–1 through 50–9–25. The standard prohibits the use of a hoe with a handle less than four feet in length for weeding and thinning crops, based on the existence of other practical and adequate alternatives to the use of these short-handled hoes. There are no comparable Federal standards or compliance policies that would apply to the conditions regulated by New Mexico under this standard.

2. *Decision.* Having reviewed the State submissions [dated 7/26/94; 7/11/95; 6/18/96; and 2/17/97] in comparison with the Federal standards, it has been determined that the State's standards are identical to the comparable Federal standards, and are accordingly approved. OSHA has also determined that the State's recodified standards at 11 NMAC 5.2 (General Industry), 11 NMAC 5.3 (Construction), and 11 NMAC 5.4 (Agriculture), are identical to the comparable Federal standards, and therefore approves the standards.

OSHA has determined that New Mexico's Field Sanitation standard is at least as effective as the comparable Federal standard, as required by section 18(c)(2) of the Act. OSHA has determined that the differences between the State and Federal standards are minimal, and that the standards are ''substantially identical.'' OSHA therefore approves this standard.

OSHA has reviewed New Mexico's independent standard for Tools for Weeding and Thinning Crops in comparison to existing OSHA enforcement policies and procedures, and has determined that the standard is at least as effective. This standard has been in effect since July 23, 1986. During this time, OSHA has received no indication of significant objection to the State's independent standard, as to its conformance with the product clause requirements of section 18(c)(2) of the Act. [Previously, after an opportunity for public comment, OSHA approved the State of Arizona's standard, Hoes for Weeding and Thinning Crops (51 FR 17684).] OSHA therefore approves New Mexico's standard, Tools for Weeding and Thinning Crops. However, the right to reconsider this approval is reserved, should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Office of the Secretary, Environment Department, 1190 St. Francis Drive, Room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes, and making the Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law, which included public comment, and further public participation would be repetitious.

The decision is effective July 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Dallas, Texas, this twenty-fifth day of February 1997.

Emzell Blanton, Jr.,

Regional Administrator.

[FR Doc. 97–19364 Filed 7–22–97; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 17, 1997.

TIME AND DATE: 10: a.m., Thursday, July 24, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Medusa Cement Co.* v. *Secretary of Labor*, Docket Nos. PENN 97–20–RM, etc. (Whether the administrative law judge should have recused himself because of bias against counsel for the operator).

TIME AND DATE: Immediately following oral argument, Thursday, July 24, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Medusa Cement Co.* v. *Secretary of Labor*, Docket Nos. PENN 97–20–RM, etc. (See oral argument listing, *supra*, for issues).

TIME AND DATE: 10:00 a.m., Thursday, July 31, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Harlan Cumberland Coal Co.*, Docket No. KENT 94–966, etc. (Issues include whether the judge erred in determining that the operator violated 30 C.F.R. §§ 70.207(a) and 70.208(a) when the Mine Safety and Health Administration failed to receive desirable dust samples taken by the

operator and placed in the mail and whether the judge properly assessed penalties for each of the three violations alleged).

TIME AND DATE: 2:00 p.m., Thursday, July 31, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Jim Walter Resources, Inc.*, Docket No. SE 95–140 (Issues include whether the judge correctly determined that the operator violated the requirement of 30 C.F.R. § 75.342(a)(4) that a longwall methane monitor be in proper operating condition where the operator placed line curtain to divert methane away from the monitor, that the operator violated the requirement of 30 C.F.R. § 75.323(b)(1) that certain actions be taken when methane levels reach 1 percent or more at the face, and that both violations where due to the operator's unwarrantable failure).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATON: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–19473 Filed 7–21–97; 2:38 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–098]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by August 22, 1997.

ADDRESSES: Comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: none.

Title: Patents.

OMB Number: 2700–0048.

Type of Review: Extension.

Need and Uses: The information is needed to ensure the proper disposition of rights to inventions made in the course of NASA funded research.

Affected Public: Businesses or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 7,487.

Responses Per Respondent: 1.

Estimated Annual Responses: 7,487.

Estimated Hours Per Request: 30 min to 10 hrs.

Estimated Annual Burden Hours: 17,870.

Frequency of Report: Annual.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–19249 Filed 7–22–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, 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)(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 National Endowment for the Arts is soliciting comments concerning a proposed revision of: Blanket justification for NEA Funding Application Guidelines FY 1998–FY 2001 to include reporting requirements for grants resulting from those applications. A copy of this revised collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 23, 1997. The National Endowment for the Arts 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 the electronic submissions of responses.

ADDRESS: Lauren Baden, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 628, Washington, DC 20506–0001, telephone (202) 682–5408 (this is not a toll-free number), fax (202) 682–5798.

Murray Welsh,

Director, Administrative Services.

[FR Doc. 97–19260 Filed 7–22–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Dance Section (Creation & Presentation category) to the National Council on the Arts will be held on August 12–15, 1997. The panel will meet from 9:00 a.m. to 7:00 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506. A portion of this meeting, from 9:00 a.m. to 10:30 a.m. on August 15, will be open to the public for a policy discussion on guidelines, Leadership, Millennium, planning, and field needs and trends.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on August 12–14 and from 10:30 a.m. to 7:00 p.m. on August 15, are for the

purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussion at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: July 17, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–19259 Filed 7–22–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–356]

University of Illinois at Urbana-Champaign (University of Illinois at Urbana-Champaign Low Power Reactor Assembly); Order Terminating Facility Operating License No. R–117

By application dated February 10, 1995, as supplemented on April 24, 1995, and October 2, 1996, the University of Illinois at Urbana-Champaign (the licensee or University) requested from the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorization to decommission the Low Power Reactor Assembly (LOPRA or the reactor) located on the licensee's campus in Urbana, Illinois. The letter of February 10, 1995, also contained a request for terminating Facility Operating License No. R–117. A ''Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License'' was published in the **Federal Register** on May 15, 1995 (60 FR 25931). No requests for a hearing were received. By license amendment dated January 21, 1997 (Amendment No. 6), the Commission approved the licensee's decommissioning plan. By letter dated April 15, 1997, the licensee informed the NRC that the University had completed decommissioning of the LOPRA in accordance with Amendment No. 6.

The LOPRA was located in the bulk shielding tank of the Advanced TRIGA Research Reactor (TRIGA) (Docket No. 50–151, License R–115), which is located in the University's Nuclear Reactor Laboratory. No licensed material remains under the LOPRA license. The LOPRA fuel and components (special nuclear and byproduct material) were transferred to the TRIGA license. Some components containing byproduct material were subsequently transferred to a University of Illinois byproduct materials license (License IL–01271–01) issued by the State of Illinois to allow the components to be stored at a facility away from the Nuclear Reactor Laboratory. The transferred components and fuel will be maintained by the University with the capability to be assembled in the bulk shielding tank into a subcritical assembly that would be used under the existing authority of the TRIGA license.

By separate action, the NRC has granted, in accordance with 10 CFR 50.12, a specific exemption to the part of the requirements in 10 CFR 50.82(b)(6)(ii) that requires as a condition of license termination a terminal radiation survey and associated documentation to demonstrate that the facility and site are suitable for release. Because the TRIGA will continue to operate, the Nuclear Reactor Laboratory, the TRIGA, and the bulk shielding tank that was the site of the LOPRA are not being released for unrestricted use by this Order and will continue to be subject to the terms of Operating License No. R–115 for the TRIGA Research Reactor. Because the licensee wants to maintain the capability to construct and use a subcritical assembly made of components and fuel from the decommissioned LOPRA under the authority of the TRIGA license, no reactor components are being released for unrestricted use by this action. For these reasons, there is no facility or site to release as part of this license termination.

Accordingly, the Commission has found that the decommissioning has been performed in accordance with the decommissioning plan approved by Amendment No. 6 to Facility Operating License No. R–117, dated January 21, 1997. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by the University of Illinois at Urbana-Champaign, and pursuant to Sections 104 and 161 b and i of the Atomic Energy Act of 1954, as amended, and in accordance with 10 CFR 50.82(b)(6), Facility Operating License No. R–117 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant environmental impact. The Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on July 16, 1997 (62 FR 38129).

For further details with respect to this action, see (1) The application for termination of Facility Operating License No. R–117, dated February 10, 1995, as supplemented; (2) the Commission's safety evaluation related to the termination of the license; (3) the environmental assessment and finding of no significant impact; (4) the Commission's exemption to part of the requirements of 10 CFR 50.82(b)(6); and (5) the ''Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License,'' published in the **Federal Register** on May 15, 1995 (60 FR 25931). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20037.

Copies of items 2, 3, 4, and 5 may be obtained upon receipt of a request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Reactor Program Management.

Dated at Rockville, Maryland, this 16th day of July 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Acting Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19338 Filed 7–22–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–356]

University of Illinois at Urbana-Champaign (University of Illinois at Urbana-Champaign Low Power Reactor Assembly)

Exemption

I

The University of Illinois at Urbana-Champaign (the licensee or University) is the holder of Facility Operating License Nos. R–115 and R–117, which authorize operation of the University of Illinois Advanced TRIGA Research Reactor (TRIGA) and the University of Illinois Low Power Reactor Assembly (LOPRA). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The reactors are located in the Nuclear Reactor Laboratory on the campus of the University of Illinois at Urbana-Champaign in Urbana, Champaign County, Illinois.

II

By application dated February 10, 1995, as supplemented on April 24, 1995, and October 2, 1996, the licensee requested from the NRC authorization to decommission the LOPRA. The letter of February 10, 1995, contained a request that authorization be given for terminating Facility Operating License No. R–117. By license amendment dated January 21, 1997 (Amendment No. 6), the Commission approved the decommissioning plan for the LOPRA. By letter dated April 15, 1997, the licensee informed the NRC that the University had completed decommissioning the LOPRA in accordance with Amendment No. 6 to the Facility Operating License. As discussed in the University's decommissioning plan and letter of April 15, 1997, the LOPRA and the TRIGA (Docket No. 50–151) (which remains in operation), are both located at the same site, the Nuclear Reactor Laboratory, which continues to be a restricted environment. The LOPRA was located in the bulk shielding tank of the TRIGA reactor.

As part of the license termination process, the licensee has requested a specific exemption in accordance with Title 10 of the Code of Federal Regulations, Section 50.12 (10 CFR 50.12), to part of the requirements of 10 CFR 50.82(b)(6)(ii). This part of the regulations requires, as a condition of license termination, that a terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release. The Nuclear Reactor Laboratory and TRIGA will remain subject to the TRIGA license after the LOPRA license is terminated. All components and fuel from the LOPRA were transferred to the TRIGA license. Some components containing byproduct material were subsequently transferred to a University of Illinois byproduct materials license (License IL–01271–01) issued by the State of Illinois to allow the components to be stored at a facility away from the Nuclear Reactor Laboratory. The components and fuel will be maintained for the capability to construct and operate a subcritical assembly in the TRIGA bulk shielding tank, which is currently authorized under the TRIGA license. No facility or site is to be released as part of this license termination. Therefore, a terminal radiation survey of the facility and site are not necessary for terminating the LOPRA license. The Nuclear Reactor Laboratory and former LOPRA components will be considered for release in the future when the University requests termination of the TRIGA license.

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 when (1) 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, according to 10 CFR 50.12(a)(2)(ii), whenever ''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 50.82(b)(6) is to describe the requirements that must be met for license termination, one of which is that the results of the terminal radiation survey and other documentation show that the facility and site meet the requirements for release. These survey results and documentation form part of the basis for terminating the license, because license termination usually results in the release of the facility and site for unrestricted use. In this case, the reactor components and fuel (the facility) were transferred to the TRIGA license (some components were subsequently transferred to a University of Illinois byproduct materials license), and the site will not be released because of the continued operation of the TRIGA reactor. Therefore, application of the rule that the terminal radiation survey and other documentation must show that the facility and site are suitable for release is not necessary in order to terminate the license.

IV

For the foregoing reasons, the NRC staff has concluded that not requiring a terminal radiation survey and associated documentation that demonstrate that the facility and site are suitable for release as a condition of license termination 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 part of 10 CFR 50.82(b)(6)(ii) 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), the 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 50.82(b)(6)(ii) that a terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release are needed as a condition of Facility Operating License No. R–117 termination.

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 38130).

For further details with respect to this action, see (1) the application for terminating Facility Operating License No. R–117, dated February 10, 1995, as supplemented; (2) the Commission's safety evaluation related to the termination of the license; (3) the environmental assessment and finding of no significant impact; and (4) the Commission's Order terminating Facility Operating License No. R–117. Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20037.

Copies of items 2, 3, and 4 may be obtained upon receipt of a request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director,

Division of Reactor Program Management.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19339 Filed 7–22–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Watts Bar Nuclear Plant, Unit 1; Notice of Public meeting on TVA'S Proposal to Insert Lead Test Assemblies Containing Tritium Producing Burnable Absorber Rods into Watts Bar Unit 1 During Cycle 2

The U.S. Nuclear Regulatory Commission (NRC) will hold a public meeting regarding the Tennessee Valley Authority (TVA) proposal to insert lead test assemblies (LTA) containing tritium producing burnable absorber rods (TPBAR) in the Watts Bar Unit 1 reactor core during fuel cycle 2. The purpose of the change is to provide irradiation services to support U.S. Department of Energy (DOE) investigations into the feasibility of using commercial light water reactors to maintain the DOE inventory of tritium. This meeting is to provide an opportunity for public comment on the technical issues regarding the TVA proposal and to ensure that the public is aware of the NRC staff's review activities and has the opportunity to provide comments on them. The meeting will be held from 7:00 p.m. until 9:00 p.m. on August 7, 1997, in the Quality Inn located in Sweetwater, Tennessee. The meeting will be transcribed and will be open to the public.

The structure of the meeting shall be as follows:

Thursday, August 7, 1997:

7:00 p.m.—NRC Opening Remarks
7:15 p.m.—DOE Program Description
7:45 p.m.—TVA Presentation
8:00 p.m.—NRC Review and Inspection
8:30 p.m.—Public Comments
9:00 p.m.-Meeting Adjourns

Members of the public who are interested in presenting comments relative to TVA's proposal should notify the project manager, at the number given below, 5 working days prior to the meeting. A brief summary of the information to be presented and the time requested should be provided in order to make appropriate arrangements. Time allotted for presentations by members of the public will be determined based upon the number of requests received and will be announced at the beginning of the meeting. Time permitting, additional, unscheduled presentations will be considered. The order for public presentations will be on a first-receive, first-to-speak basis. Written statements will also be accepted and included in the record of the meeting. Written statements may be presented at the meeting or mailed to the U.S. Nuclear Regulatory Commission, Mailstop O–14B21, Attn: R.E. Martin, Washington, DC 20555.

Requests for the opportunity to present information can be made by contacting R.E. Martin, Project Manager, Division of Reactor Projects I/II at (301) 415–1493. Persons planning to attend this meeting are urged to contact the project manager 1 or 2 days prior to the meeting to be advised of any changes.

For further details with respect to this action, see TVA's application for amendment of the Watts Bar Unit 1 operating license dated April 30, 1997, the NRC staff's Request for Additional Information (RAI) dated May 29, 1997, TVA's responses to the RAI dated June 18, 1997 and the NRC staff's RAI dated June 24, 1997. These documents 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 in the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated at Rockville, Maryland, this 17th day of July 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19337 Filed 7–22–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On July 16, 1997, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations. On page 38134, under Detroit Edison Company, Fermi-2, Docket No. 50–341, the date of the supplemental letter should have been July 2, 1997.

Dated at Rockville, Maryland, this 17th day of July 1997.

For the Nuclear Regulatory Commission.

Kevin A. Connaughton,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19340 Filed 7–22–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 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 July 1, 1997, of ten rescission proposals and seven deferrals contained in three special messages for FY 1997. These messages were transmitted to Congress on December 4, 1996, and on February 10 and March 19, 1997.

Rescissions (Attachments A and C)

As of July 1, 1997, ten rescission proposals totaling $407 million had been transmitted to the Congress. Congress approved six of the Administration's rescission proposals, totaling $285 million, in P.L. 105–18. Attachment C shows the status of the FY 1997 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1997, $2,220 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

62 FR 14478, Wednesday, March 26, 1997

Franklin D. Raines,

Director.

ATTACHMENT A—STATUS OF FY 1997 RESCISSIONS

[in millions of dollars]

	Budgetary resources
Rescissions proposed by the President	407.1
Rejected by the Congress	−122.0
Amounts rescinded by P.L. 105–18	−285.1
Currently before the Congress	.....

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 July 1, 1997 (OMB/Agency releases of $1,324.7 million.)	−1,324.7
Overturned by the Congress	.....
Currently before the Congress	2,219.6

ATTACHMENT C—STATUS OF FY 1997 RESCISSION PROPOSALS—AS OF JULY 1, 1997

[Amounts in thousands of dollars]

Agency/bureau account	Rescission No.	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:								
P.L. 480 grants—Titles I (OFD), II, and III.	R97–1	.....	3,500	2–10–97	3,500	4–30–97	.....	
P.L. 480 program account	R97–2	.....	46,500	2–10–97	46,500	4–30–97	.....	
DEPARTMENT OF DEFENSE—MILITARY								
Operation and Maintenance:								
Operation and maintenance, Defense-wide.	R97–4	.....	10,000	2–10–97	10,000	4–28–97	.....	
Procurement:								
National Guard and Reserve equipment.	R97–5	.....	62,000	2–10–97	62,000	4–28–97	.....	
DEPARTMENT OF ENERGY								
Energy Programs:								
Strategic petroleum reserve	R97–6	.....	11,000	2–10–97	11,000	4–28–97	11,000	P.L. 105–18
Clean coal technology	R97–11	.....	10,000	3–19–97	.....	6–12–97	10,000	P.L. 105–18
Power Marketing Administrations:								
Construction, rehabilitation, operation and maintenance, Western Area Power Administration.	R97–7	.....	2,111	2–10–97	2,111	4–28–97	2,111	P.L. 105–18
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs:								
Annual contributions for assisted housing.	R97–8	.....	[1] 250,000	2–10–97	([1])	6–12–97	250,000	P.L. 105–18
DEPARTMENT OF JUSTICE								
General Administration:								

ATTACHMENT C—STATUS OF FY 1997 RESCISSION PROPOSALS—AS OF JULY 1, 1997—Continued

[Amounts in thousands of dollars]

Agency/bureau account	Rescission No.	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					
Working capital fund	R97–9	.....	6,400	2–10–97	(*)	6–12–97	6,400	P.L. 105–18
GENERAL SERVICES ADMINISTRATION								
General Activities:								
Expenses, Presidential transition	R97–10	.....	[2] 5,600	2–10–97	([2])	6–12–97	5,600	P.L. 105–18
Total Rescissions		0	407,111	.....	135,111	.....	285,111	

[1] Funds are not available for obligation pursuant to section 218 of P.L. 104–208.
[2] Funds are not available for obligation pursuant to 2 USC 102 (note).
* Funds were never withheld from obligation.

ATTACHMENT D—STATUS OF FY 1997 DEFERRALS—AS OF JULY 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 7–1–97
		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	1,050,927	.....	.....	.....	207,365
Foreign military financing program.	D97–2	1,412,375	.....	12–4–96	101,655	.....	.....	.....	1,310,720
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	119,166	.....	.....	.....	28,634
DEPARTMENT OF STATE									
Other:									
United States emergency refugee and migration assistance fund.	D97–6	118,486	.....	12–4–96	53,000	.....	.....	.....	65,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses.	D97–7 D97–7A	7,365	 4	12–4–96 2–10–97	.....	.....	.....	.....	 7,369
Total, Deferrals		3,544,318	4	.....	1,324,748	.....	.....	0	2,219,574

[FR Doc. 97–19317 Filed 7–22–97; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38841; File No. SR–AMEX–97–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Observation of Martin Luther King, Jr. Day as an Exchange Holiday

July 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 9, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the proposed Rule Change

The Exchange proposes to amend Commentary .01 to Exchange Rule 1. The text of the proposed rule change is as follows. (additions are italicized; deletions are bracketed):

Commentary .01 Holidays.—The Board has determined that the Exchange will not be open for business on New Year's Day, Martin Luther King, Jr. Day, President's Day, [Washington's Birthday], Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. Martin Luther King, Jr. Day, President's Day, [Washington's Birthday] and Memorial Day will be observed on the third Monday in January, the third Monday in February and the last Monday in May, respectively, in accordance with Federal legislation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements maybe examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify the Exchange's practice with respect to Exchange holidays so as to include Martin Luther King, Jr. Day among those holidays on which the Exchange is not open for business.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[2] in general and furthers the objectives of Section 6(b)(5)[3] in particular in that it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e)(3) of Rule 19b–4 thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR–AMEX–97–25 and should be submitted by August 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19261 Filed 7–22–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5)3.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(3).

[6] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38843; File No. SR–DCC–97–07]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges for Repurchase Agreements

July 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 13, 1997, Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 27, 1997, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend DCC's fees for the settlement of repurchase and reverse repurchase agreement (''repo'') transactions involving U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend DCC's fees for the settlement of repo transactions on U.S. Treasury securities. Previously, DCC's fees for the settlement of repo transactions on U.S. Treasury securities were the greater of either $9.00 per ticket, which included both the on-leg and off-leg deliveries, or a percentage of the notional amount of the trade based on the term of the trade. The specific percentages were: (1) for trades up to fifteen days in length, one-half basis point per million per day; (2) for trades from fifteen to thirty-five days in length, one-third basis point per million per day; and (3) for trades greater than thirty-five days in length, one-fifth basis point per million per day.[3]

DCC's new fee schedule will establish two sets of fees based on whether the trade is over or under thirty-five days in length. For trades under thirty-five days in length, participants will be charged $1.30 for each of the on-leg and off-leg deliveries. Participants also will be charged all out-of-pocket charges incurred with each delivery including charges by Federal Reserve banks for delivery of securities through FedWire; charges by DCC's clearing bank, the Bank of New York, for delivery of securities; and money wire charges.[4] DCC will charge participants that request substitutions $1.30 for each substitution.

For trades thirty-five days in length and longer, participants will be charged one-fifth basis point per million per day of the notional amount of the trade. Participants will not be charged for out-of-pocket expenses or for substitutions.

Interdealer brokers will be charged $1.50 for all trades submitted to DCC. This fee covers both on-date and off-date deliveries and both delivery of securities by the repro party to DCC and delivery of securities by DCC to the reverse repo party.

DCC believes that the proposed rule change complies with Section 17A(b)(3)(D) of the Act[5] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants. DCC believes that the proposed rule change will result in increased utilization of its clearing services thereby resulting in more securities transactions being cleared and settled through a registered clearing agency environment.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act,

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(e)(2) thereunder.[7] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested 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 Section, 450 Fifth Street, N.W., Wasnington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DCC. All submissions should refer to File No. SR–DCC–97–07 and should be submitted by August 13, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19345 Filed 7–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38848; File No. SR–DTC–97–06]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Processing of Cent-Denominated Securities

July 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 16, 1997, The Depository Trust Company (''DTC'') filed with the

[2] The Commission has modified the text of the summaries prepared by DCC.

[3] Securities Exchange Act Release No. 38334 (February 24, 1997), 62 FR 9472 [File No. SR–DCC–97–01].

[4] Money wire charges are charges by Federal Reserve banks or the Bank of New York for money transfers where DCC nets two security deliver obligations against one another resulting only in a net payment of money. In general, Federal Reserve banks and the Bank of New York do not charge for the transfer of funds on a delivery versus payment transaction but do charge for the transfer of funds in transactions where two delivery obligations are netted resulting only in a net payment of money.

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–97–06) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the way DTC processes cent-denominated securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC began processing cent-denominated securities in January, 1997.[3] Participants depositing cent-denominated securities received credit for the whole dollar amount of the deposit. But the cents portion of the aggregate dollar figure for the deposited securities was truncated. The truncated amounts were collected in an internal DTC account and along with any income derived therefrom became part of DTC's general revenues. DTC now has developed the capability to credit the cents positions resulting from deposits or principal and income payments to a participant's account. These cents positions will be maintained in a contra-CUSIP account and will be eligible for various DTC services including deposit, withdrawal, and rush withdrawal services. DTC proposes to track cent-denominated securities in the manner described above so that its records may more accurately reflect the true ownership of cent-denominated positions.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[4] and the rules and regulations thereunder because it will promote efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While most DTC participants recognize the benefits of tracking cents in a contra-CUSIP account, some participants have expressed concern with the new tracking method because participants will be required to make programming changes in order to use the new system. As a result, DTC has made participation in the cent-denominated program voluntary so that participants that must make systems changes to use the new program may have sufficient time to do so.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(3)[5] of the Act and Rule 19b–4(e)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–06 and should be submitted by August 13, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19347 Filed 7–22–97; 8:45 am]

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[2] The Commission has modified the text of the summaries submitted by DTC.

[3] Securities Exchange Act Release No. 36798 (January 31, 1996), 61 FR 4692 [File No. SR–DTC–95–14] (order approving proposed rule change which made fractional shares and cent-denominated securities depository eligible at DTC).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(3).

[6] 17 CFR 240.19b–4(e)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38846; International Series Release No. 1092; File No. SR–ISCC–96–05]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Election of Directors

July 17, 1997.

On October 11, 1996, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and on October 17, 1996, December 11, 1996, March 21, 1997, and May 8, 1997, filed amendments to a proposed rule change (File No. SR–ISCC–96–05). Notice of the proposal was published in the **Federal Register**

[1] 15 U.S.C. 78s(b)(1).

on May 16, 1997.[2] On June 27, 1997, ISCC filed a technical amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies ISCC's by-laws and adopts an Amended and Restated Shareholders Agreement between ISCC and the National Securities Clearing Corporation (''NSCC''), ISCC's sole shareholder, in order to amend ISCC's current procedures for the election of directors. Pursuant to ISCC's temporary exemption from the fair representation requirements of the Act, NSCC currently appoints ISCC's board.[4]

Under the proposed rule change, the size of the board of directors is reduced from twenty-two directors to seven directors. Of the seven directors, NSCC will select two directors. The NSCC directors will serve one year terms. The other five directors (''participant directors'') are divided into three classes, and their terms will expire on a staggered basis. The nominating committee is reduced from seven persons to three persons and is divided into two classes. The terms for the two classes will expire on a staggered basis every two years.

Beginning in 1998, at least fifteen business days prior to the regularly scheduled board meeting that is (i) closest in time to the upcoming annual meeting of shareholders and (ii) at least ninety days before such annual meeting, the nominating committee will submit to the Secretary by overnight mail or by telefax its list of nominees to fill the nominating committee positions whose terms are expiring immediately following the upcoming annual meeting (*i.e.*, for the nominating committee that will make nominations for the next year's election).[5] The Secretary will include such list in the materials sent to the directors in connection with the upcoming board meeting.

At the board meeting, the board may nominate individuals for one or more vacancies on the nominating committee. The board must notify the Secretary of any nominations within two business days of the meeting by overnight mail, telefax, or telephone. Within five business days of the meeting, the Secretary must mail a list of all nominating committee to each participant.

At least ninety days before the annual meeting of shareholders, the nominating committee will submit to the Secretary its list of nominees for participant directors. Within five days of receipt of the list, the Secretary will mail a list of all nominees for the positions of participant director to each participant.

Participants have the right to nominate candidates for the nominating committee and for participant directors by filing with the Secretary, not less than sixty days prior to the date of the annual meeting, a petition signed by the lesser of 5% of all participants or fifteen participants. If a participant petition is filed or if the board nominates additional candidates to the nominating committee, the Secretary will mail to each participant at least forty-five days prior to the date of the annual meeting a ballot setting forth all of the nominees. Each participant is entitled to one vote for each ten dollars of its average monthly fee payable or paid by the participant to ISCC during the previous twelve month period. Participants must return their ballots to the Secretary at least fifteen days prior to the annual meeting. NSCC will then vote its shares in favor of the nominees selected by the participants.

II. Discussion

Section 17A(b)(3)(C)[6] of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or member and participants in the selection of its directors. In the release announcing standards for the registration of clearing agencies (''Standards Release''), the Division of Market Regulation stated that rather than prescribing a single method for providing fair representation, the Division would evaluate each clearing agency's procedures on a case-by-case basis.[7] The Standards Release provided several examples of procedures that could be used to satisfy the fair representation requirement, including solicitation of board of directors nominations from all participants and selection of director candidates by a nominating committee selected by the participants.

The Commission believes that ISCC's proposal is consistent with its obligations under the Act because it provides participants with a meaningful opportunity to participate in ISCC's election process. ISCC participants will have the opportunity to nominate candidates for both the board of directors and for the nominating committee. Furthermore, the board, which should be responsive to participant concerns, will also have the opportunity to nominate members of the nominating committee. When there is a contested election for either board or nominating committee positions, the participants will have the ability to select the candidates that will serve in such capacities. Thus, the Commission believes that ISCC's proposal is consistent with its obligations to assure the fair representation of participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–ISCC–96–5) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Duputy Secretary.

[FR Doc. 97–19348 Filed 7–22–97; 8:45 am]

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[2] Securities Exchange Act Release No. 38615 (May 12, 1997), 62 FR 27100.

[3] The amendment was a technical amendment that did not require republication of notice.

[4] ISCC's current by-laws and shareholders agreement set forth provisions establishing the number and composition of ISCC's board as well as the procedures for the election of directors. Such provisions provide for a staggered board of twenty-two directors composed of management, shareholder, and participant directors divided into four classes. Each director is nominated by a nominating committee consisting of seven members. ISCC participants have the opportunity to nominate additional candidates for directors and the right to vote in the event that additional nominees are submitted by participants. In connection with its original application for registration as a clearing agency, ISCC obtained and continues to have a temporary exemption from Section 17A(b)(3)(C) of the Act (15 U.S.C. 78q–1(b)(3)(C)) pursuant to which the above described procedures have never been used.

[5] The nominating committee that will select candidates for the 1998 annual meeting of shareholders will be appointed by the board of directors.

[6] 15 U.S.C. 78q–1(b)(3)(C).

[7] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 30086.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38845; File No. SR–NASD–97–37]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interpretation of NASD Conduct Rule 2110 Regarding Anti-Intimidation/Coordination Activities of Member Firms and Persons Associated With Member Firms

July 17, 1997.

On May 7, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'').[1] The proposed rule change was published for comment in Securities Exchange Act Release No. 38715 (June 4, 1997), 62 FR 31854 (June 11, 1997) (''Notice of Proposed Rule Change''). No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Background

On August 8, 1996, the Commission used an Order pursuant to Section 19(h)(1) of the Exchange Act (''SEC Order''), making certain findings about the NASD and conduct on the Nasdaq Market, and imposing remedial sanctions.[2] Among other findings, the Commission determined that certain activities of Nasdaq market makers had directly and indirectly impeded price competition on the Nasdaq market. In addition, the Commission determined that a number of Nasdaq market makers had coordinated quotations, trades and trade reports with other Nasdaq market makers for the purpose of advancing or protecting the market maker's proprietary trading interests. Based on the Commission's specific findings of certain anti-competitive behavior of Nasdaq market makers in the Nasdaq Stock Market, the NASD agreed to certain undertakings. In particular, Undertaking 11 requires the NASD ''[t]o propose a rule or rule interpretation for Commission approval which expressly makes unlawful the coordination by or among market makers of their quotes, trade and trade reports, and which prohibits retribution or retaliatory conduct for competitive actions of another market maker or other market participant.'' Undertaking 12 requires the NASD ''[t]o enforce Article III, Section 1 of the NASD Rules of Fair Practice (currently NASD Conduct Rule 2110), with a view to enhancing market maker competitiveness by: (a) acting to eliminate anti-competitive or unlawful enforced or maintained industry pricing conventions, and to discipline market makers who harass other market makers for narrowing the display quotations in the Nasdaq market, trading not more than the quantities of securities they are required to trade under the NASD's rules, or otherwise engaging in competitive conduct; (b) acting to eliminate coordination between or among market makers or quotes, trades and trade reports; and (c) acting to eliminate concert discrimination and concerted refusals to deal by market makers.''

To comply with both Undertaking 11 and 12, the NASD proposed a rule interpretation of NASD Conduct Rule 2110 (formerly Article III, Section 1 of the NASD's Rules of Fair Practice). The NASD noted that the conduct described in the interpretation is fundamentally inconsistent with the obligations of member firms to their customers and is inimical to the public interest in fair and efficient securities makets. The NASD, therefore, believes that the conduct described in the interpretation is already prohibited by NASD Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade. The NASD, however, proposed the interpretation to address specifically certain of the findings contained in the SEC Order and to emphasize the importance placed by the NASD on the enforcement of the prohibition.

II. Description

This rule interpretation defines as conduct inconsistent with just and equitable principles of trade certain conduct by and among members firms, and sets forth specific exclusions (numbered 1 through 7) which identify bona fide commercial activities by and among member firms. The conduct excluded, however, must otherwise be in compliance with all other applicable law. The interpretation identifies three general areas of conduct that are prohibited. The first part of the interpretation prohibits coordinating activities by member firms involving quotations, prices, trades and trade reporting. Conduct covered by this prohibition would include, but not be limited to, agreements to report trades late or inaccurately, or to agree to maintain certain minimum spreads or quote sizes above the legal minimums. In addition, the interpretation does not prohibit a market maker from contacting another market maker in a locked or crossed market situation to attempt to unlock or uncross the market. Moreover, the overall prohibited behavior outlined in the interpretation applies to primary market as well as secondary trading activities.

The second part of the interpretation prohibits ''directing or requesting'' another member to alter prices or quotations. This would include, among other things, situations in which a market maker requests another market maker to move or adjust its displayed quotations to accommodate the requesting market maker. This prohibition does not extend to activity, identified in exclusion number 7, that permits a member to route customer orders to market makers for handling or a correspondent firm of the member to ask a market maker to represent an order in the market maker's quote.

The third part of the interpretation relates to conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member in a manner that interferes with or impedes the forces of competition among member firms in the Nasdaq Stock Market. This part of the prohibition is intended to reach conduct that goes beyond legitimate bargaining among member firms. This conduct may include, among other things, refusals to trade, improper systems messages, trading in odd lots, and other conduct intended to influence a member to engage in improper market activity or refrain from legitimate market activity. However, as identified in exclusion number 6, this language would not prohibit a member from taking unilateral action in selecting with whom to trade and under what terms, based on legitimate market and commercial criteria (e.g., credit exposure).

III. Discussion

The Exchange Act contemplates that the U.S. securities markets shall be ''free and open''[3] with safeguards ''to protect investors and the public interest.''[4] The Commission stated in the 21(a) Report that vigorous price competition is a hallmark of a free and open market and

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. *See also* Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD, the Nasdaq Market and Nasdaq Market Makers, Securities Exchange Act Release No. 37542 (August 8, 1996) (''21(a) Report''), and Appendix thereto.

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78o–3(b)(6).

is critically important to the efficient functioning and regulation of a dispersed dealer market and any significant hindrance to price competition impedes the free and open market prescribed by the Exchange Act.

The Commission believes that the NASD's proposed interpretation expressly reaffirms that anti-competitive and intimidation and harassment of other members is prohibited. The Commission noted in the 21(a) Report, and the NASD's interpretation reiterates, that such conduct is inconsistent with just and equitable principles of trade. The Interpretation clearly delineates the type of behavior that is antithetical to a free and open market while preserving the ability of members to engage in legitimate market activity. Although the behavior prohibited under the interpretation has continually been violative of NASD Rule 2110 and the federal securities laws, the Commission believes that the interpretation will clearly highlight for members that such conduct is a serious violation of NASD Rules.

The Commission believes that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD, in particular, Sections 15A(b)(6) and 15 A(b)(11).[5] The Commission finds that the proposed interpretation specifically prohibiting anti-competitive conduct of member broker/dealers and persons associated with member broker/dealers is in furtherance of the requirements of Section 15A(b)(6) that the Association's rules be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. In addition, the Commission funds that the proposed rule change is consistent with Section 15A(b)(11) in that the interpretation is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6) and 15A(b)(11).[6]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Exchange Act,[7] that the proposed rule change (SR–NASD–97–37) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19346 Filed 7–22–97; 8:45 am]

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[5] 15 U.S.C. 78*o*–3.

[6] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38851; File No. SR–NASD–97–49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to an Extension of the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

July 18, 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 July 11, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend the effectiveness of NASD Rule 4613(a)(1)(C) until December 31, 1997. NASD Rule 4613(a)(1)(C) provides that market makers in the first fifty Nasdaq stocks subject to the Commission's Limit Order Display Rule are allowed to quote their actual quote size (''Actual Size Rule'').[1] The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

NASD Rule 4613 Character of Quotations

(a) Two-Sided Quotations.

(1) No change.

(A)–(B) No change.

(C) As part of a pilot program implemented by The Nasdaq Stock Market, during the period January 20, 1997 through at least [July 18] *December 31*, 1997,[2] a registered market maker in a security listed on The Nasdaq Stock Market that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 29, 1996, the Commission promulgated a new rule and adopted amendments to other SEC rules that are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (these rules are collectively referred to hereinafter as the ''Order Handling

[1] The NASD has concurrently requested that the pilot for the Actual Size Rule be expanded to apply to 100 additional Nasdaq securities and extended until March 27, 1998. *See* Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 10, 1997.

[2] The NASD filed an amendment (''Amendment No. 1'') to extend the pilot to December 31, 1997, rather than September 26, 1997. *See* Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 17, 1997.

Rules'').[3] With respect to securities listed on Nasdaq, the Order Handling Rules are being implemented according to a phased-in implementation schedule. In particular, fifty Nasdaq securities became subject to the rules on January 20, 1997 (''first fifty)[4] and an additional 650 Nasdaq securities have been phased in under the Order Handling Rules since that time.[5] The remaining Nasdaq securities will become subject to the rules according to time tables established by the Commission.[6]

In particular, the SEC adopted Rule 11Ac1–4, the ''Display Rule,'' which requires the display of customer limit orders: (1) That are priced better than a market maker's quote;[7] or (2) that add to the size associated with a market maker's quote when the market maker is at the best price in the market.[8] By virtue of the Display Rule, investors will now have the ability to directly advertise their trading interest to the marketplace, thereby allowing them to compete with market maker quotations and affect the size of bid-ask spreads.[9] The other rule changes adopted by the SEC involve amendments to the SEC's Firm Quote Rule, Rule 11Ac1–1. The most significant of these amendments requires market makers to display in their quote any better priced orders that the market maker places into an electronic communications network (''ECN'') such as SelectNet or Instinet (''ECN Rule''). Alternatively, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided the ECN: (1) Ensures that the best priced orders entered by market makers into the ECN are communicated to Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by market makers into the ECN, so that brokers and dealers who do not subscribe to the ECN can trade with those orders.

In order to facilitate implementation of the SEC's Order Handling Rules and reflect the order-driven nature of the Nasdaq market that will be brought about by implementation of these rules, on January 10, 1997, the Commission approved a variety of amendments to NASD rules and Nasdaq's Small Order Execution System (''SOES'') and SelectNet Service.[10] In particular, one of the NASD Rule changes approved by the Commission as a temporary pilot provides that Nasdaq market makers in the ''first fifty'' stocks subject to the Commission's Limit Order Display Rule are required to display a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary account.[11] For Nasdaq stocks outside of the ''first fifty,'' the minimum quotation size requirements remain the same.[12]

The NASD submitted the proposal for the Actual Size Rule because it believed, and continues to believe, that the new order-driven nature of Nasdaq brought about by the Display Rule obviates the regulatory justification for minimum quote size requirements because investors will have the capability to display their own orders on Nasdaq. The NASD believed it was appropriate to impose the Mandatory Quote Size Requirements to ensure an acceptable level of market liquidity when Nasdaq market makers were the only market participants who could quote. Now that the Display Rule permits investors to set the quote, the NASD believes it is appropriate to treat Nasdaq market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements when they are not representing customer orders. In sum, with the successful implementation of the SEC's Order Handling Rules, the NASD believes that mandatory quote size requirements impose unnecessary regulatory burdens on market makers which are not consistent with the Act.

At the same time, the NASD does not believe that implementation of the Actual Size Rule in an environment where limit orders are displayed has or will compromise the quality of the Nasdaq market. First, the display of customer limit orders enhances the depth, liquidity, and stability of the market and contributes to narrower quoted spreads, thereby mitigating the effects of the loss of displayed trading interest, if any, by market makers. Second, removing artificial quote size requirements may lead to narrower market maker spreads, thereby reducing investors' transaction costs. Third, permitting market makers to quote in size commensurate with their own freely-determined trading interest will enhance the pricing efficiency of the Nasdaq market and the independence and competitiveness of dealer quotations. Fourth, removing quotation size requirements will facilitate greater quote size changes, thereby increasing the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not.

Indeed, in its order approving the Actual Size Rule, the Commission noted that it ''preliminarily believes that the proposal will not adversely affect market quality and liquidity''[13] and that it ''believes there are substantial reasons * * * to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driven market would be beneficial to investors.''[14] In addition, the Commission stated that, ''based on its experience with the markets and discussions with market participants, [it] believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors.''[15]

Nevertheless, in light of concerns raised by commenters opposed to the Actual Size Rule regarding the potential adverse impacts of the Rule on market liquidity and volatility, the Commission determined to approve the Rule on a

[3] See Securities Exchange Act Release 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Adopting Release'').

[4] See Securities Exchange Act Release No. 38139 (January 8, 1997), 62 FR 1385 (January 10, 1997).

[5] See Securities Exchange Act Release No. 38490 (April 9, 1997), 62 FR 18514 (April 16, 1997); Securities Exchange Act Release No. 38246 (February 5, 1997), 62 FR 6468, (February 12, 1997).

[6] See Securities Exchange Act Release No. 38490 (April 9, 1997), 62 FR 18514 (April 16, 1997).

[7] For example, if a market maker's quote in stock ABCD is 10–10¼ (1000 x 1000) and the market maker receives a customer limit order to buy 200 shares at 10⅛, the market maker must update its quote to 10⅛–10¼ (200 x 1000).

[8] For example, if a market maker receives a limit order to buy 200 shares of ABCD at 10 when its quote in ABCD is 10–10¼ (1000 x 1000) and the NBBO for ABCD is 10–10⅛, the market maker must update its quote to 10–10¼ (1200 x 1000).

[9] There are eight exceptions to the immediate display requirement of the Limit Order Display Rule: (1) Customer limit orders executed upon receipt; (2) limit orders placed by customers who request that they not be displayed; (3) limit orders for odd-lots; (4) limit orders of block size (10,000 shares or $200,000); (5) limit orders routed to a Nasdaq or exchange system for display; (6) limit orders routed to a qualified electronic communications network for display; (7) limit orders routed to another member for display; and (8) limit orders that are all-or-none orders. See Rule 11Ac1–4(c).

[10] See Securities Exchange Act Release No. 38156 (January 16, 1997), 62 FR 2415 (order partially approving SR–NASD–96–43) (''Actual Size Quote Rule Approval Order'').

[11] Thus, the Actual Size Rule does not affect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 shares or more, it must display a quote size of at least 200 shares absent an exemption from the Display Rule.

[12] In particular, NASD Rule 4613(a)(2) requires each market maker in a Nasdaq issue other than those in the ''first fifty'' to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (e.g., 1,000, 500, or 200 shares for Nasdaq National Market issues and 500 or 100 shares for Nasdaq SmallCap Market issues) (''Mandatory Quote Size Requirements'').

[13] See Actual Size Rule Approval Order, *supra* note 5 at 2425.

[14] *Id.* at 2423.

[15] *Id.* at 2424.

three-month pilot basis to afford the Commission, the NASD and Nasdaq an opportunity to gain practical experience with the rule and evaluate the effects of the Rule. The factors identified by the Commission to be considered in this evaluation include, among others, the impact of reduced quotation sizes on liquidity, volatility and quotation spreads.[16]

On April 11, 1997, the Commission approved an NASD rule filing that extended the duration of the pilot program until July 18, 1997.[17] In this filing, the NASD and Nasdaq provided statistical information prepared by the NASD's Economic Research Department concludes that: (1) The SEC's Order Handling Rules have dramatically improved the quality of the Nasdaq market, particularly with respect to the size of quoted spreads; (2) among those securities subject to the SEC's Order Handling Rules, there is no appreciable difference in market quality between those stocks subject to the Actual Size Rule and those stocks subject to Mandatory Quote Size Requirements; and (3) implementation of the Actual Size Rule has not resulted in any significant diminution of the ability of investors to receive automated executions through SOES, SelectNet, or proprietary systems operated by broker-dealers.[18] Subsequently, on June 3, 1997, the NASD submitted a formal study to the Commission on the Actual Size Rule that, among other things, reiterated these findings and provided more detailed information on the NASD's analysis of the Rule.[19]

The NASD is proposing a further extension of the 50 stock pilot for the Actual Size Rule until December 31, 1997. The NASD and Nasdaq believe that experience with the Actual Size Rule has clearly demonstrated that the Rule has not harmed investors or the quality of the Nasdaq market and, thus, that the Rule should be permanently approved and expanded to all Nasdaq securities. Nevertheless, the NASD and Nasdaq believe it is prudent, in response to suggestions made by Commission staff, to extend the 50 stock pilot program for the Rule until December 31, 1997. Specifically, with the additional experience with the Actual Size Rule that extension of the pilot period will provide, the NASD and Nasdaq believe the Commission's analysis of the NASD's proposal for expansion of the Rule will be more comprehensive.

For the reasons noted above, the NASD believes the proposed rule change is consistent with Sections 11A(a)(1)(C), 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate to furtherance of the purposes of the Act. Section 15A(b)(11) requires the NASD to, among other things, formulate rules designed to produce fair and informative quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 file number SR–NASD–97–49 and should be submitted by August 13, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities association and has determined to approve the extension of the pilot through at least December 31, 1997.[20] The Commission approved the Actual Size Rule on a pilot basis so that the effects of the rule could be assessed. When approving the Actual Size Rule on a pilot basis, the Commission stated that it believed that a reduction in the quotation size requirement could reduce the risks that market makers must take, produce accurate and informative quotations, and encourage market makers to maintain competitive prices even in the changing market conditions resulting from the Order Execution Rules. The NASD has produced an extensive economic analysis of the pilot, and several commentators have provided their own economic analysis in rebuttal. An extension of the pilot

[16] The Commission stated that "the NASD study should include an analysis of: (1) The number of market makers in each of the 50 securities, and any change in the number over time; (2) the average aggregate dealer and inside spread by stock over time; (3) the average spread for each market maker by stock; (4) the average depth by market maker (including limit orders), and any change in the depth over time; (5) the fraction of volume executed by a market maker who is at the inside quote by stock; and (6) a measure of volume required to move the price of each security one increment (to determine the overall liquidity and volatility in the market for each stock). The Commission expects that these factors should be contrasted over the time period immediately preceding the pilot and after the beginning of the pilot." *Id.* at 2425. In addition, the Commission stated that the NASD should conduct a similar study to compare the "first fifty" stocks (to which the Rule applied) with the "second fifty" stocks (stocks subject to the SEC's Order Handling Rules but not the Actual Size Rule). *Id.*

[17] See Securities Exchange Act Release No. 38512 (April 15, 1997), 62 FR 19373 (April 21, 1997).

[18] See *id.* at 19375–77.

[19] See Securities Exchange Act Release No. 38720 (June 5, 1997), 62 FR 31856 (June 11, 1997). A copy of the executive summary of this report is available at Nasdaq's World Wide Web site at "http://www.nasdaq.com". Members of the public may also download a file containing the entire report at this site.

[20] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

will provide the Commission with an additional period of time to evaluate the economic studies and review the comments on the NASD's study. In addition, the Commission believes that the proposed rule change will benefit the markets by providing more experience with the rule before a decision is made regarding permanent approval. The Commission will consider the NASD's further proposals regarding the Actual Size Rule in the coming months, as well as the future of the 50 stock pilot itself. Accordingly, the Commission believes that the pilot is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act and should be extended beyond the July 18, 1997, expiration date. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to continue the pilot on an uninterrupted basis while it evaluates the NASD's proposal for expansion of the pilot.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–97–49) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19445 Filed 7–22–97; 8:45 am]

BILLING CODE 8010–01–U

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2965]

State of Michigan

As a result of the President's major disaster declaration on July 11, 1997, I find that Macomb, Oakland, and Wayne Counties in the State of Michigan constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding which occurred on July 2, 1997. Applications for loans for physical damages may be filed until the close of business on September 9, 1997, and for loans for economic injury until the close of business on April 13, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Genesee, Lapeer, Livingston, Monroe, St. Clair, and Washtenaw in the State of Michigan may be filed until the specified date at the above location.

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 296506 for physical damage and 953000 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 15, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–19319 Filed 7–22–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2963]

State of Mississippi; (And a Contiguous Parish in Louisiana)

Marion County and the contiguous Counties of Jefferson Davis, Lamar, Lawrence, Pearl River, and Walthall in the State of Mississippi, and Washington Parish in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 18 through June 20, 1997. Applications for loans for physical damages may be filed until the close of business on September 11, 1997 and for economic injury until the close of business on April 13, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 296306 for Mississippi and 296406 for Louisiana. For economic injury the numbers are 952800 for Mississippi and 952900 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 11, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–19321 Filed 7–22–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 2966]

State of Ohio; (And Contiguous Counties in Kentucky)

Clermont County and the contiguous Counties of Brown, Clinton, Hamilton, and Warren in Ohio, and Bracken, Campbell, and Pendleton Counties in Kentucky constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on July 2, 1997. Applications for loans for physical damages may be filed until the close of business on September 15, 1997 and for economic injury until the close of business on April 16, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250

	Percent
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 296612 for Ohio and 296712 for Kentucky. For economic injury the numbers are 953100 for Ohio and 953200 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 16, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–19320 Filed 7–22–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2571]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. § 2776).

EFFECTIVE DATE: As shown on each letter.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State [(703) 875–6644].

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 16, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520

February 25, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the sale of the Government of Taiwan of the Improved Radar Warning Receiver (IRWR) Production Systems, associated and support equipment, test equipment, and spares.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–51–96

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, DC 20520

March 4, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data and assistance in support of the design and development of a replacement system for the Swiss Air Defense Ground Environment (ADGE) System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–2–97

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, DC 20520

June 26, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract to Norway in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data and assistance for the integration, testing and operational assistance in the modification of the AN/TPQ–36A radar to an AN/MPQ–64 radar system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–3–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

November 26, 1996.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves a follow-on contract to provide support for the Saudi HAWK and Patriot Air Defense Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–5–97

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

June 19, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification provides technical data and assistance to the Royal Saudi Ministry of Defense for the F–5 aircraft support and manning program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–6–97

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

March 13, 1997.

Dear Mr. Speaker: Pursuant to sections 36(c) and 36 (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed approval for export to the United Kingdom of defense articles and defense services sold under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of an Advanced Acoustic Processor (AAP) in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Transmittal No. DTC–7–97

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

February 6, 1997.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of radar for the Replacement Maritime Patrol Aircraft (RMPA).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–21–97

The Honorable Jesse Helms, Chairman, Committee on Foreign Relations, United States Senate.

United States Department of State

Washington, D.C. 20520

February 6, 1997.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of the acoustics subsystem for the Replacement Maritime Patrol Aircraft (RMPA).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–22–97

The Honorable Jesse Helms, Chairman, Committee on Foreign Relations, United States Senate, United States Senate.

United States Department of State

Washington, D.C. 20520

February 6, 1997.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Israel and ultimately to the United Kingdom of the Electronic Support Measures (ESM) System for the U.K. Replacement Maritime Patrol Aircraft (RMPA).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–23–97

The Honorable Jesse Helms, Chairman, Committee on Foreign Relations, United States Senate.

United States Department of State

Washington, D.C. 20520

May 9, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification provides technical data and defense services for ground support and operational support for the ICO Satellite Program in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

The Honorable Newt Gingrich, Speaker of the House of Representatives.

[Transmittal No. DTC–27–97]

United States Department of State

Washington, D.C. 20520

May 2, 1997.

Dear Mr. Speaker: Pursuant to sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the production of Significant Military Equipment sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information and know-how for the manufacture of the BLU–109/B and the FMU–143B/B Fuzing Systems in Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause

competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–32–97
The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

April 8, 1997.

Dear Mr. Speaker: Pursuant to sections 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of the Rocsat I scientific sallelite along with associated hardware and ground support equipment to Taiwan.

The United States Government is prepared to license the export of these items, having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–33–97
The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

March 17, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services for Major Defense Equipment (MDE) sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of 16 APG–66H radars, spare parts and support equipment to Indonesia.

The United States Government is prepared to license the export of these items, having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–36–97
The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

April 25, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement for the sale of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification provides support services for the United Kingdom's WAH–64 helicopters, as well as technical data and assistance for training equipment associated with these helicopters.

The United States Government is prepared to license the export of these items, having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–44–97
The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

June 26, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of an avionics suite and cockpit procedures and trainer for the L–159 aircraft program in the Czech Republic.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–45–97
The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

March 5, 1997.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $14,000,000.00 or more.

The transaction contained in the attached certification involves the export to Brunei of one S–70A helicopter with External Stores Support System and spare parts.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–0946–97
The Honorable Jesse Helms, Chairman, Committee on Foreign Relations, United States Senate.

United States Department of State

Washington, D.C. 20520

May 7, 1997.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $14,000,000.00 or more.

The transaction contained in the attached certification involves the export of Paveway II Laser Guided Bomb Kits with spare parts to Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–47–97

The Honorable Jesse Helms, Chairman, Committee on Foreign Relations, United States Senate.

United States Department of State

Washington, D.C. 20520

May 7, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $14,000,000.00 or more.

The transaction contained in the attached certification involves the export to Malaysia to two S–70A helicopters with External Stores Support System, optional countermeasure equipment and spare parts.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–48–97

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

April 8, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the transfer of thirteen (13) CF–5 Freedom Fighter Aircraft to the Philippines Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Legislative Affairs, Assistant Secretary.

Enclosure: Transmittal No. DTC–50–97

The Honorable Newt Gingrich, Speaker, House of Representatives.

United States Department of State

Washington, D.C. 20520

June 24, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000.00 or more.

The transaction contained in the attached notification involves the export to Israel of nine (9) Pratt and Whitney F100–PW–229 engines, spare parts, engine trailers and shipping equipment. The Ministry of Defense is the end-user.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm involved.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–51–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

July 11, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000.00 or more.

The transaction described in the attached certification involves the provision of services and hardware to the United Kingdom for developing an air-launched, anti-armor missile.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–54–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

June 24, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000.00 or more.

The transaction described in the attached certification involves the transfer to Japan of technical data and assistance for the development of liquid hydrogen/liquid oxygen upper stages for expendable launch vehicles.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–57–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

May 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000.00 or more.

The transaction described in the attached certification involves the export of six (6) aircraft equipped with U.S.-origin defense articles to Canada for integration and then re-export to the Government of Algeria.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–70–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

June 19, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract to the United Kingdom in the amount of $14,000,000.00 or more.

The transaction described in the attached certification involves providing Fine Track Sensor units and the technical services to complete their integration into turrets built in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–76–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

June 24, 1997.

Dear Mr. Speaker: Pursuant to sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting herewith notification of a proposed approval for exports to the United Kingdom of defense articles and defense services sold commercially under a contract in the amount of $14,000,000.00 or more.

The transaction described in the attached certification involves the transfer of technical data and equipment necessary to develop and produce the Combined Arms Tactical Trainer (CATT), including software, documentation and training.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal notification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC–79–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

June 24, 1997.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense equipment or services sold commercially under contract to the United Kingdom in the amount of $14,000,000.00 or more.

The transaction described in the attached certification involves the transfer of technical data and assistance for the Nimrod 2000 program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–81–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

July 11, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the re-transfer of major defense equipment sold commercially under a contract in the amount of $14,000,000.00 or more.

The transaction described in the attached certification involves the re-transfer of five CF–5 aircraft from the Government of Canada to the Government of Botswana for use by the Botswana Defense Force.

The United States Government is prepared to license the re-transfer of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, although unclassified, contains business information submitted to the Department of State by the applicant.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–82–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

[FR Doc. 97–19139 Filed 7–22–97; 8:45 am]

BILLING CODE 4710–25–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Proposed Revocation of Korea's Identification as a Priority Foreign Country in Telecommunications Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed action and request for public comments.

SUMMARY: On July 26, 1996, the United States Trade Representative (USTR) identified the Republic of Korea as a ''priority foreign country'' (PFC) under section 1374 of the Omnibus Trade and Competitiveness Act of 1988 (the Act) because certain acts, policies, and practices denied mutually advantageous market opportunities to U.S. suppliers of telecommunications goods and services. As a result of negotiations following this identification, Korea has made measurable progress towards the elimination of the objectionable acts, policies, or practices which were the subject of the specific negotiating objectives determined by the USTR under section 1375 of the Act. The Office of the USTR seeks comments on its proposal to revoke Korea's PFC identification on August 11, 1997.

DATES: Comments are due by August 8, 1997.

ADDRESSES: Comments may be submitted to Ms. Sybia Harrison, Office of the General Counsel, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Seen Murphy (202–395–6813), Office of Asia and the Pacific, or Joanna McIntosh (202–395–7203), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

SUPPLEMENTARY INFORMATION: Section 1374 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3103) provides that the USTR may identify as a ''priority foreign country'' those countries which maintain barriers that deny U.S. telecommunications products and services mutually advantageous market opportunities.

On July 26, 1996, the USTR identified Korea as a PFC as a result of Korea's failure to eliminate barriers that deny mutually advantageous market opportunities for U.S. providers of telecommunications goods and services and that are not covered by the existing agreements with Korea. 61 Fed. Reg. 40279 (Aug. 1, 1996). The barriers included, but were not limited to the Korean Government's intervention in

procurements by private Korean companies, improper promotion of domestic manufacturing of high technology telecommunications products, and limitations on foreign ownership of telecommunications services. As described below, over the last twelve months, Korea has conducted multilateral and bilateral negotiations with the United States and made measurable progress in eliminating the objectionable acts, policies, and practices which were the subject of the specific negotiating objectives determined by USTR:

(1) Korea participated in the successful conclusion of the Information Technology Agreement (ITA), negotiated under the auspices of the World Trade Organization (WTO), which was concluded in December 1996. Under the ITA, Korea will eliminate in stages tariffs and customs duties on an agreed package of information technology products, including telecommunications equipment. Korea will reduce tariffs to zero by the year 2000 for all covered products, except for thirteen items for which tariffs will be reduced to zero by 2004. These tariff eliminations will increase market access in Korea for U.S. suppliers of telecommunications goods.

(2) Korea also participated in the successful conclusion in February 1997 of the WTO basic telecommunications services negotiations. Beginning in January 1998, Korea will allow increased foreign ownership of domestic telecommunications services companies and adopt a number of transparent and pro-competitive regulatory principles. These commitments will enhance competition in the Korean telecommunications services sector and provide new opportunities for U.S. investors and services operators, as well as equipment suppliers.

(3) The Korean Ministry of Information and Communication (MIC) issued a policy statement on July 14, 1997 clarifying recent revisions of government practices, procedures and objectives in the telecommunications sector. The policy statement provides guidance to domestic and foreign telecommunications goods and services suppliers in Korea and enhances transparency by correcting misperceptions regarding the treatment of foreign suppliers. The specific policies embodied in the MIC policy statement include: national treatment and non-discrimination for foreign companies; government non-intervention in private sector procurement; transparent procedures on services licensing, equipment certification and type approval; foreign ownership limitations; the protection of intellectual property and proprietary information; technology transfer; satellite services authorization; pro-competitive regulatory measures; and the evolving role of the Korean Communications Commission to further promote and protect fair competition in the Korean market.

The United States will continuously monitor Korea's adherence to the above commitments and will enforce them, as appropriate, under U.S. trade laws and applicable WTO procedures to ensure effective implementation.

Public Comment: Requirements for Submissions

Pursuant to the Act, this notice invites written comments from interested parties on the proposed action. Submissions are to be received in writing by not later than 5:00 p.m. on August 8, 1997 and must be in English and provided in five (5) copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy. A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155)—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

The Office of the USTR will maintain a file on this issue, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by the Office of the USTR from the public with respect to this proposal. An appointment to review the public file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday.

Irving Williamson,

Acting General Counsel.

[FR Doc. 97–19556 Filed 7–21–97; 3:59 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Global Positioning System Antenna

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order pertaining to airborne Global Positioning System (GPS) antenna. The proposed TSO prescribes the performance standards that manufacturer-specified appliances must meet to be identified with the marking ''TSO–C144.''

DATES: Comments must identify the TSO file number and be received on or before October 30, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C144, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW,

Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

At the request of the FAA, the RTCA, Incorporated Special Committee, SC–159, convened to develop standards for the use of the Global Positioning System. The recommendations of this committee provide the basis for the October 20, 1995 publication of the *Minimum Operational Performance Standards for Global Navigation Satellite System (GNSS) Airborne Antenna Equipment*, RTCA/DO–228, which is the foundation for the requirements set forth in this proposed Technical Standard Order.

The standards of proposed TSO–C144 apply to antenna used in airborne GPS applications to provide signals to a GPS (or Wide Area Augmentation System) sensor or system, which will then provide flight path deviation commands for use by either the pilot or autopilot. Proposed TSO–C144 does not address the use of signals received through this antenna for any other applications.

Marking

To fulfill the requirements of 14 CFR 21.607(d), the manufacturer would have to permanently and legibly mark at least one major component of the article with the markings listed in that paragraph. In addition to the requirements of 14 CFR 21.607, this TSO proposes requirements for marking of separate components. Each separate component would have to be permanently and legibly marked with the name of the manufacturer, manufacturer's part number, and the TSO number.

If the component includes software, the part number would have to include the hardware and software identification; that part number would have to uniquely identify the hardware and software design, including the modification status. Separate part numbers would be acceptable for hardware and software.

Data Requirements

The proposed TSO has the following technical data submittal requirements to comply with 14 CFR 21.605(a)(2):

1. Operating instructions and equipment limitations. The limitations shall be sufficient to describe the operational capacity of the equipment.

2. Installation procedures and limitations. The limitations shall be sufficient to ensure that the article, when installed in accordance with the installation procedures, continues to meet the requirements of this TSO. The limitations shall also be sufficient to identify any unique aspects of the installation. The limitations shall include at least the following:

a. A note with the following statement:

''The conditions and tests required for TSO approval of this article are minimum performance standards. It is the responsibility of those desiring to install this article either on or within a specific type or class of aircraft to determine that the article, when installed, performs in accordance with the design specifications that meet this TSO. The article may be installed only if further evaluation by the applicant documents an acceptable installation and is approved by the Administrator.''

b. Specification of whether the antenna incorporates a preamplifier.

c. The currents and voltages induced by high current tests of paragraph 23.6.3 of RTCA/DO–160C must be specified so that compatibility with a receiver can be verified at installation.

d. When applicable, identification that the article is an incomplete system or a multi-use system. This must describe the functions that are intended to be provided by the article.

3. Schematic drawings as applicable to the installation procedures.

4. Wiring drawings as applicable to the installation procedures.

5. Specifications.

6. List of the components (by part number) that make up the equipment system complying with the standards prescribed in this TSO.

7. Instructions for periodic maintenance and calibration which are necessary to define the article's design.

8. An environmental qualifications form as described in RTCA/DO–160C for each component of the system.

9. Manufacturer's TSO qualification test report.

10. Nameplate drawing.

11. A drawing list, enumerating all of the drawings and processes that are necessary to define the article's design.

12. If the article includes software: Plan for Software Aspects of Certification (PSAC), Software Configuration Index, and Software Accomplishment Summary.

Note: The FAA recommends that the PSAC be submitted early in the software development process. Early submittal will allow timely resolution of issues such as partitioning and determination of software levels.

Note that there is also data that must be made available upon the request of the ACO manager. They are listed in Paragraph 5 of proposed TSO C–144.

Data to be Furnished with Manufactured Articles

The proposed TSO would require the TSOA holder to provide the article purchaser with certain data described in Paragraph 5 of proposed TSO C–144.

How to Obtain Copies

A copy of the proposed TSO–C144 may be obtained via Internet (http:/ www.faa.gov/avr/air/100home.htm) or on request from the office listed under ''For Further Information Contact.'' Copies of RTCA Document No. DO–228, ''Minimum Operational Performance Standards for Global Navigation Satellite System (GNSS) Airborne Antenna Equipment'', dated October 20, 1995, may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Issued in Washington, DC on July 17, 1997.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–19357 Filed 7–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Navigation Sensors Using the Global Positioning System (GPS) Augmented by the Wide Area Augmentation System (WAAS)

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order pertaining to airborne navigation sensors using GPS augmented by WAAS. The proposed TSO prescribes the performance standards that manufacturer-specified appliances must meet to be identified with the marking ''TSO–C145.''

DATES: Comments must identify the TSO file number and be received on or before October 30, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C145, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Or deliver comments to: Federal Aviation

Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

At the request of the FAA, the RTCA, Incorporated Special Committee, SC–159 convened to develop standards for the use of the Global Positioning System. The recommendations of this committee provide the basis for the January 16, 1996 publication of the *Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment*, RTCA/DO–229, which is the foundation for the requirements set forth in this proposed Technical Standard Order.

The standards of proposed TSO–C145 apply to airborne GPS/WAAS sensors that provide position information to a navigation management unit. Using this position information, the navigation management unit outputs deviation commands, referenced to a desired flight path, for use by the pilot or autopilot to guide the aircraft. Proposed TSO–C145 does not address integration issues or the use of this position information for any other applications.

Marking

To fulfill the requirements of 14 CFR 21.607(d), the manufacturer would have to permanently and legibly mark at least one major component of the article with the markings listed in that paragraph. In addition to the requirements of 14 CFR 21.607, this TSO proposes requirements for marking of separate components. Each separate component would have to be permanently and legibly marked with the name of the manufacturer, manufacturer's part number, and the TSO number.

If the component includes software, the part number would have to include the hardware and software identification; that part number would have to uniquely identify the hardware and software design, including the modification status. Separate part numbers would be acceptable for hardware and software.

Data Requirements

The proposed TSO has the following technical data submittal requirements to comply with 14 CFR 21.605(a)(2):

1. Operating instructions and equipment limitations. The limitations shall be sufficient to describe the operational capability of the equipment.

2. Installation procedures and limitations. The limitations shall be sufficient to ensure that the article, when installed in accordance with the installation procedures, continues to meet the requirements of this TSO. The limitations shall also be sufficient to identify any unique aspects of the installation. The limitations shall include at least the following

a. A note with the following statement:

''The conditions and tests required for TSO approval of this article are minimum performance standards. It is the responsibility of those desiring to install this article either on or within a specific type or class of aircraft to determine that the article, when installed, performs in accordance with the design specifications that meet this TSO. The article may be installed only if further evaluation by the applicant documents an acceptable installation and is approved by the Administrator.''

b. Adequate specification of the interface between the GPS/WAAS sensor and other systems to ensure proper functioning of the integrated system. This must include maximum tolerable currents and voltages into the antenna port if the equipment is to be installed with a standard antenna (TSO–C144).

c. If the equipment has only been demonstrated to satisfy the requirements of RTCA/DO–229 when used in conjunction with a particular antenna, the use of that antenna (by part number) must be specified as a limitation.

(d) If the equipment is dependent on any inputs in order to satisfy the requirements of RTCA/DO–229 (e.g., baro-aided FDE), those inputs should be made a requirement on the installation (i.e., a limitation).

e. When applicable, identification that the article is an incomplete system or a multi-use system. This must describe the functions that are intended to be provided by the article.

3. Schematic drawings as applicable to the installation procedures.

4. Wiring drawings as applicable to the installation procedures.

5. Specifications.

6. List of the components (by part number) that make up the equipment system complying with the standards prescribed in this TSO.

7. Instructions for periodic maintenance and calibration which are necessary for continued airworthiness once the article is installed.

8. An environmental qualifications form as described in RTCA/DO–160C for each component of the system.

9. Manufacturer's TSO qualification test report.

10. Nameplate drawing.

11. A drawing list, enumerating all of the drawings and processes that are necessary to define the article's design.

12. If the article includes software: Plan for Software Aspects of Certification (PSAC), Software Configuration Index, and Software Accomplishment Summary.

Note: The FAA recommends that the PSAC be submitted early in the software development process. Early submittal will allow timely resolution of issues such as partitioning and determination of software levels.

Note that there is also data that must be made available upon the request of the ACO manager. They are listed in Paragraph 5 of proposed TSO C–145.

Data To Be Furnished With Manufactured Articles

The proposed TSO would require the TSOA holder to provide the article purchaser with certain data described in Paragraph 5 of proposed TSO C–145.

How To Obtain Copies

A copy of the proposed TSO–C145 may be obtained via Internet (http:/www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.** Copies of RTCA Document No. DO–229, ''Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment'', dated January 16, 1996, may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on July 17, 1997.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–19358 Filed 7–22–97; 8:45 am]

BILLING CODE 9410–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 12; Notice of Acceptance of Primary Application and Related Filings; Notice of Related Abandonments Proposed By Applicants.[1]

SUMMARY: The Board is accepting for consideration the primary application and related filings filed June 23, 1997, by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).[2] The primary application seeks Board approval and authorization under 49 U.S.C. 11321–25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. The related filings, which include (among other things) two abandonment petitions and three abandonment notices, seek related relief contingent upon approval of the primary application.

DATES: The effective date of this decision is July 23, 1997. Any person who wishes to participate in this proceeding as a party of record must file, no later than August 7, 1997, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 22, 1997. Responsive (including inconsistent) applications, written comments (including comments of the U.S. Secretary of Transportation and the U.S. Attorney General), protests, requests for conditions, and any other opposition evidence and argument must be filed by October 21, 1997. For further information respecting dates, see Appendix B.

ADDRESSES: An original and 25 copies of all documents must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423–0001.[3]

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

Furthermore, one copy of each document filed in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to each of applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004–1202; (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006–3939; and (3) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The transaction for which approval is sought in the primary application involves: the purchase by CSX and NS, by and through their subsidiaries, of all of the stock of CRR; the operation or use of some of Conrail's lines and assets by CSX and NS separately; and the operation or use of the remainder of Conrail's lines and assets by CSX and NS jointly.

The Applicants

CSX operates approximately 18,504 route miles and 31,961 track miles of railroad in 20 states east of the Mississippi River and in Ontario, Canada. Of that total, approximately 1,607 miles are operated under trackage rights while the remaining mileage is either owned by CSX or operated by CSX under contract or lease. CSX has principal routes to, and serves, virtually every major metropolitan area east of the Mississippi River, from Chicago, IL, St. Louis, MO, Memphis, TN, and New Orleans, LA, on the West to Miami, FL, Jacksonville, FL, Charleston, SC, Norfolk, VA, Washington, D.C., and Philadelphia, PA, on the East. Other major metropolitan areas served by CSX include Atlanta, GA, Nashville, TN, Cincinnati, OH, Detroit, MI, Pittsburgh, PA, Baltimore, MD, Charlotte, NC, Birmingham, AL, and Louisville, KY. CSX interchanges traffic with other railroads at virtually all of the aforementioned locations and at numerous other points on its railroad system.

NS operates approximately 14,282 route miles and 25,236 track miles of railroad in 20 states, primarily in the South and the Midwest, and in Ontario, Canada. Of that total, approximately 1,520 miles are operated under trackage rights while the remaining mileage is either owned by NS or operated by NS under contract or lease. NS has routes to, and serves, virtually every major market in an area that stretches from Kansas City, MO, in the Midwest to Norfolk, VA, in the East, to Chicago, IL, and Buffalo, NY, in the North, and to New Orleans, LA, and Jacksonville, FL, in the South. These markets include Memphis, Chattanooga and Knoxville, TN; St. Louis, MO; Fort Wayne, IN; Detroit, MI; Toledo, Cincinnati, Columbus, and Cleveland, OH; Louisville and Lexington, KY; Bluefield, WV; Alexandria, Roanoke, Lynchburg, and Richmond, VA; Winston-Salem, Raleigh, Durham, Charlotte, and Morehead City, NC; Greenville, Spartanburg, Columbia, and Charleston, SC; Atlanta, Macon, Valdosta, and Savannah, GA; Bessemer, Birmingham, Montgomery, and Mobile, AL; Des Moines, IA; and Peoria, Springfield, and Decatur, IL. NS interchanges traffic with other railroads at virtually all of the locations mentioned above and at numerous other locations on its railroad system.

Conrail operates approximately 10,500 miles of railroad in the Northeast and Midwest, and its primary network

[1] This decision covers: (i) the primary application, which was filed in the STB Finance Docket No. 33388 lead docket; and (ii) the 39 related filings (1 application, 16 petitions, and 22 notices), which were filed in the 40 embraced dockets listed in Appendix A (one related filing, respecting the proposed abandonment in Edgar and Vermilion Counties, IL, was filed in two dockets).

[2] CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[3] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

forms an ''X'' connecting Chicago (via the Chicago Line) and East St. Louis (via the St. Louis and Indianapolis Lines) in the West, with Boston, MA, New York, NY, and Northern New Jersey (via the Chicago Line and other main lines), and with Pittsburgh, Harrisburg, PA, Philadelphia, Baltimore, and Washington, DC (via the Pittsburgh Line and other main lines) in the East. The ''hub'' of the ''X'' is located in, and about, Cleveland, OH.

Conrail's Chicago Line extends between Chicago and the Albany, NY, area and connects there (through the Selkirk Branch) with the River Line (serving North Jersey via the west shore of the Hudson River), the Hudson Line (through which Conrail reaches New York City and Long Island), and the Boston Line (which extends to Boston and via which Conrail serves New England). Other important routes contiguous to the Chicago Line include the Detroit Line (between Detroit and a connection with the Chicago Line at Toledo), the Michigan Line (the portion between Detroit and Kalamazoo), and the Kalamazoo Secondary and Branch (between Kalamazoo, MI, and Elkhart, IN, on the Chicago Line), the Montreal Secondary (between Syracuse, NY, and Adirondack Junction, Quebec), and the Southern Tier (between Buffalo, NY, and Croxton, NJ).

Conrail's St. Louis Line extends between East St. Louis, IL, and Indianapolis, IN, connecting there with the Indianapolis Line which, in turn, extends between Indianapolis and the Cleveland area (connection with the Chicago Line). Conrail's Cincinnati Line (between Cincinnati and Columbus, OH) and its Columbus Line (between Columbus and Galion, OH, on the Indianapolis Line) and the Scottslawn Secondary Track (between Columbus and Ridgeway, OH, on the Indianapolis Line) all accommodate traffic flows between other parts of the Conrail system and Cincinnati, Columbus and/or Conrail points served via the West Virginia Secondary Track between Columbus and the Kanawha Valley of West Virginia.

Conrail's principal interchange points are in Chicago, East St. Louis and Salem, IL, via Union Pacific Railroad Company (UPRR) trackage rights between Salem and St. Elmo on the St. Louis Line; Streator, IL; Cincinnati; Hagerstown, MD; and Washington, D.C. Other important interchange points include Effingham, IL; Fort Wayne, IN; Toledo and Columbus, OH; Buffalo and Niagara Falls, NY; Montreal, Quebec; Rotterdam Junction, NY; and Worcester (including Barbers), MA.

The Proposed Transaction

The transaction for which approval is sought in the primary application involves the joint acquisition of control by CSX and NS of CRR and its subsidiaries (the Control Transaction), and the division between CSX and NS of the operation and use of Conrail's assets (the Division). The Control Transaction and the Division are governed principally by an agreement (the Transaction Agreement) dated as of June 10, 1997, between CSXC, CSXT, NSC, NSR, CRR, CRC, and CRR Holdings LLC (CRR Holdings, a recently created limited liability company jointly owned by CSXC and NSC). *See* CSX/NS–25, Volumes 8B & 8C (the Transaction Agreement, including various schedules and exhibits). The Control Transaction and the Division are also governed by a letter agreement (the CSX/NS Letter Agreement) dated as of April 8, 1997, between CSXC and NSC, but only to the extent such CSX/NS Letter Agreement has not been superseded either by the Transaction Agreement or by the agreement (the CRR Holdings Agreement) that governs CRR Holdings. *See* CSX/NS–25, Volume 8A at 350–99 (the CSX/NS Letter Agreement) and at 400–36 (the CRR Holdings Agreement).

Acquisition of Control of Conrail

CSX and NS have already acquired 100% of the common stock of CRR in a series of transactions that included a CSX tender offer that was consummated on November 20, 1996, a NS tender offer that was consummated on February 4, 1997, a joint CSX/NS tender offer that was consummated on May 23, 1997, and a merger that was consummated on June 2, 1997. In the aftermath of this series of transactions: CRC remains a direct wholly owned subsidiary of CRR; CRR has become a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSXC and NSC (CSXC holds a direct 50% voting interest and a 42% equity interest in CRR Holdings; NSC holds a direct 50% voting interest and a 58% equity interest in CRR Holdings). The merger that was consummated on June 2, 1997 (the Merger), involved the merger of Green Merger Corp. (Merger Sub, a direct wholly owned subsidiary of Tender Sub) into CRR, with CRR being the surviving corporation; and, in connection with the Merger: (i) Each remaining outstanding share of CRR common stock not held by CSX, NS, or their affiliates was converted into the right to receive $115 in cash, without interest; and (ii) the shares of Merger Sub, all of which were then owned by Tender Sub, were converted into 100 newly issued shares of CRR, all of which were placed into a voting trust (the CSX/NS Voting Trust) to prevent CSXC and NSC, and their respective affiliates, from exercising control of CRC and its carrier subsidiaries pending review by the Board of the primary application. *See* CSX/NS–25, Volume 8A at 323–49 (the agreement that governs the CSX/NS Voting Trust).

At the present time, the affairs of CRR and CRC are under the control of their independent boards of directors. The Transaction Agreement provides that, following the effective date of the Board's approval of the primary application (the Control Date), CRR and CRC will each be managed by a board of directors consisting of six directors divided into two classes, each class having three directors. On each board, CSXC will have the right to designate three directors and NSC will likewise have the right to designate three directors; and actions that require the approval of either board will require approval both by a majority of the directors on that board designated by CSX and by a majority of the directors on that board designated by NS.

Division of Conrail

The Transaction Agreement provides that, if the primary application is approved, the division of the operation and use of Conrail's assets will be effected on the Closing Date, which is defined as the third business day following the date on which certain conditions precedent (including the effectiveness of a final Board order and, where necessary, sufficient labor implementing agreements) shall have been satisfied or waived, or such other date as may be agreed upon. *See* CSX/NS–18 at 11; CSX/NS–25, Volume 8B at 45. It is anticipated that, during the period beginning on the Control Date and ending on the Closing Date, CSX and NS will exercise joint control of Conrail as a separately functioning rail system.

Formation of NYC and PRR

To effect the Division, CRC will form two wholly owned subsidiaries (referred to collectively as the Subsidiaries): New York Central Lines LLC (NYC) and Pennsylvania Lines LLC (PRR). CSXC will have exclusive authority to appoint the officers and directors of NYC; NSC will likewise have exclusive authority to appoint the officers and directors of PRR; and CRC, as the sole member of the Subsidiaries, will (with certain exceptions) follow CSXC's and NSC's

directions with respect to the management and operation of NYC and PRR, respectively.

Allocation of Conrail Assets and Liabilities

On the date of the Division, CRC will assign to NYC and PRR certain of CRC's assets. NYC will be assigned those CRC assets designated to be operated as part of CSX's rail system (the NYC-Allocated Assets), and PRR will be assigned those CRC assets designated to be operated as part of NS's rail system (the PRR-Allocated Assets). These assets will include, among other things, certain lines and facilities currently operated by CRC, whether owned by CRC or operated by CRC under trackage rights. Certain additional assets (referred to as the Retained Assets) will continue to be held by CRR and CRC (or their subsidiaries other than NYC and PRR) and will be operated by them for the benefit of CSX and NS. In addition, on the date of the Division: the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL (the Fort Wayne Line), will be transferred to CRC in a like-kind exchange for CRC's Chicago South/Illinois Lines (the Streator Line); and CRC will assign the Fort Wayne line to NYC, to be operated together with the other Conrail lines to be assigned to NYC and used by CSX as part of CSX's rail system.

Assets Allocated to NYC. The NYC-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated ''TR''):

(1) NY/NJ Area to Cleveland (New York Central Railroad route), including: (a) Line segments from North NJ Terminal to Albany (Selkirk), (b) Albany to Poughkeepsie, NY, (c) Poughkeepsie to New York City (TR), (d) New York City to White Plains (TR), (e) Albany to Cleveland via Syracuse, Buffalo and Ashtabula, OH, (f) Boston to Albany, (g) Syracuse to Adirondack Jct., PQ, (h) Adirondack Jct. to Montreal (TR), (i) Woodard, NY, to Oswego, NY, (j) Syracuse to Hawk, NY, (k) Hawk to Port of Oswego (TR), (l) Buffalo Terminal to Niagara Falls/Lockport, (m) Lockport to West Somerset (TR), (n) Syracuse to NYSW/FL connections, NY, (o) Albany/Boston Line to Massachusetts branch lines, (p) Albany/Boston Line to Massachusetts branch lines (TR), (q) New York City to Connecticut branch lines (TR), (r) Connecticut branch lines (TR), (s) Connecticut Branch lines, (t) Churchville, NY, to Wayneport, NY, (u) Mortimer, NY, to Avon, NY, and (v) Rochester Branch, NY;

(2) Crestline, OH, to Chicago (Pennsylvania Railroad route), including: (a) Crestline to Dunkirk, OH, (b) Dunkirk to Ft. Wayne, IN, (c) Ft. Wayne to Warsaw, IN, (d) Warsaw to Chicago Terminal (Clarke Jct.), IN, and (e) Adams, IN, to Decatur, IN;

(3) Berea to E. St. Louis, including: (a) Cleveland Terminal to Crestline, (b) Crestline to E. St. Louis via Galion, OH, Ridgeway, OH, Indianapolis, IN, Terre Haute, IN, Effingham, IL, and St. Elmo, IL, (c) Anderson, IN, to Emporia, IN, (d) Columbus to Galion, (e) Terre Haute to Danville, IL, (f) Danville to Olin, IN, (g) Indianapolis to Rock Island, IN, (h) Indianapolis to Crawfordsville, (i) Indianapolis to Shelbyville, IN, (j) HN Cabin, IL, to Valley Jct., IL, (k) St. Elmo to Salem, IL (TR), (l) Muncie (Walnut Street), IN, to New Castle RT, IN (TR), and (m) New Castle RT, IN;

(4) Columbus to Toledo, including: (a) Columbus to Toledo via Ridgeway, (b) Toledo Terminal to Woodville, and (c) Toledo Terminal to Stonyridge, OH;

(5) Bowie to Woodzell, MD, including: (a) Bowie to Morgantown, and (b) Brandywine to Chalk Point;

(6) NY/NJ to Philadelphia (West Trenton Line), including: Philadelphia to North NJ Terminal;

(7) Washington, D.C., to Landover, MD;

(8) Quakertown Branch, line segment from Philadelphia Terminal to Quakertown, PA (TR), and

(9) Chicago Area, line segment from Porter, IN, to the westernmost point of Conrail ownership in Indiana.

Along with these lines, CSXT will operate certain yards and shops, as well as the Conrail Philadelphia Headquarters and Philadelphia area information technology facilities.

Assets Allocated to PRR. The PRR-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated ''TR''):

(1) NJ Terminal to Crestline (Pennsylvania Railroad route), including: (a) North NJ Terminal to Allentown, PA, via Somerville, NJ, (b) Little Falls, NJ, to Dover, NJ (TR), (c) Orange, NJ, to Denville, NJ (TR), (d) Dover to Rockport (TR), (e) Rockport to E. Stroudsburg via Phillipsburg, NJ, (f) Allentown Terminal, (g) Orange to NJ Terminal (TR), (h) NJ Terminal to Little Falls (TR), (i) Bound Brook to Ludlow, NJ (TR), (j) Allentown, PA, to Harrisburg via Reading, (k) Harrisburg Terminal, (l) Harrisburg to Pittsburgh, (m) Conemaugh Line via Saltsburg, PA, (n) Pittsburgh to W. Brownsville, PA, (o) Central City, PA, to South Fork, PA, (p) Pittsburgh Terminal, (q) Monongahela, PA, to Marianna, PA, (r) Pittsburgh to Alliance, OH, via Salem, (s) Beaver Falls, PA, to Wampum, PA, (t) Alliance to Cleveland Terminal, (u) Mantua, OH, to Cleveland Terminal, (v) Alliance to Crestline, (w) Alliance to Omal, OH, (x) Rochester, PA, to Yellow Creek, OH, (y) E. Steubenville, WV, to Weirton, WV, (z) Steubenville Branches Bridge, OH, (aa) Pittsburgh Branches, (bb) Ashtabula to Youngstown, OH, (cc) Ashtabula Harbor to Ashtabula, (dd) Niles, OH, to Latimer, OH, (ee) Alliance, OH, to Youngstown, (ff) Youngstown to Rochester, (gg) Allentown to Hazelton, PA, (hh) CP Harris, PA, to Cloe, PA (TR), (ii) Cloe to Shelocta, PA, (jj) Tyrone, PA, to Lock Haven, PA (TR), (kk) Creekside, PA, to Homer City, PA, (ll) Monongahela Railroad, (mm) portion of Kinsman Connection in Cleveland, (nn) portion of 44 Ind. Track including: Dock 20 Lead, and (oo) Gem Ind. Track-Lordstown, OH;

(2) Cleveland to Chicago (New York Central Railroad route), including: (a) Cleveland Terminal to Toledo Terminal, (b) Elyria, OH, to Lorain, OH, (c) Toledo Terminal to Sylvania, OH, (d) Toledo Terminal to Goshen, IN, (e) Elkhart, IN, to Goshen, and (f) Elkhart to Porter, IN;

(3) Philadelphia to Washington (Amtrak's Northeast Corridor, referred to as NEC), including: (a) Philadelphia Terminal to Perryville, MD (TR), (b) Wilmington Terminal, DE, (c) Perryville to Baltimore (TR), (d) Baltimore Terminal, (e) Baltimore Bay View to Landover, MD (TR), (f) Baltimore to Cockeysville, MD, (g) Pocomoke, MD, to New Castle Jct., DE, (h) Harrington, DE, to Frankford/Indian River, DE, (i) Newark, DE, to Porter, DE, (j) Claremont R.T., (k) Loneys Lane Lead, and (l) Grays Yard (TR);

(4) Michigan Operations (excluding the Detroit Shared Assets Area), including: (a) Toledo Terminal to Detroit Terminal, (b) Detroit Terminal to Jackson, MI, (c) Jackson to Kalamazoo, MI, (d) Kalamazoo to Elkhart, IN, (e) Jackson to Lansing, MI, (f) Kalamazoo to Grand Rapids, (g) Kalamazoo to Porter, IN (TR), (h) Kalamazoo Ind. Track, and (i) Comstock Ind. Track;

(5) Eastern Pennsylvania lines, including (a) Philadelphia Terminal to Reading, (b) Reading Terminal, (c) Thorndale, PA, to Woodbourne, PA, (d) Leola/Chesterbrook, PA, lines, (e) Philadelphia Terminal to Lancaster, PA (TR), (f) Lancaster to Royalton, PA (TR), (g) Lancaster to Lititz/Columbia, PA, (h) portion of Stoney Creek Branch, (i) West Falls Yard, and (j) Venice Ind. Track;

(6) Indiana lines, including (a) Anderson to Goshen via Warsaw, (b) Marion to Red Key, IN, and (c) Lafayette Ind. Track;

(7) Buffalo to NY/NJ Terminal, including (a) NJ/NY Jct. to Suffern, NY (TR), (b) Suffern to Port Jervis, NY, (c) Port Jervis to Binghamton, (d) Binghamton to Waverly, (e) NJ/NY Jct. to Spring Valley, NY (TR), (f) Paterson Jct., NJ, to Ridgewood, NJ (TR), (g) Waverly to Buffalo, (h) Waverly to Mehoopany, PA, (i) Sayre, PA, to Ludlowville, NY, (j) Lyons, NY, to Himrods Jct., NY, (k) Corning, NY, to Himrods Jct., NY, (l) North Jersey Terminal to Paterson Jct., NJ (TR), (m) Paterson Jct. to North Newark, NJ, and (n) NJ/NY Jct. to North Jersey Terminal (TR);

(8) Buffalo to Harrisburg and South, including (a) Perryville, MD, to Harrisburg, PA, (b) Carlisle, PA, to Harrisburg, (c) Wago, PA, to York (area), PA, (d) Harrisburg to Shocks, PA, (e) Williamsport, MD, to Buffalo via Harrisburg, PA, (f) Watsontown, PA, to Strawberry Ridge, PA, (g) Ebenezer Jct., NY, to Lackawanna, NY, (h) Hornell, NY, to Corry, PA, (i) Corry to Erie, PA (TR), and (j) Youngstown to Oil City, PA;

(9) Cincinnati to Columbus to Charleston, WV, including (a) Columbus to Cincinnati, (b) Cincinnati Terminal, (c) Columbus Terminal to Truro, OH, (d) Truro to Charleston, WV, (e) Charleston to Cornelia, WV, and (f) Charleston to Morris Fork, WV;

(10) Chicago South/Illinois operations, including (a) Osborne, IN, to Chicago Heights, IL, via Hartsdale, (b) Hartsdale to Schneider, IN, (c) Schneider to Hennepin, IL, (d) Keensburg, IL, to Carol, IL, and (e) Schneider to Wheatfield, IN; and

(11) Chicago Market, including (a) Western Ave. Operations/Loop to Cicero/Elsdon, IL, (b) Chicago to Porter, IN, (c) Clarke Jct., IN, to CP 501, IN, (d) CP 509 to Calumet Park, IL, (e) Western Ave. Ind. Track, (f) Old Western Ave. Ind. Track, (g) North Joint Tracks, (h) Elevator Lead & Tri-River Dock, (i) CR&I Branch, (j) 49th Street Ind. Track, (k) 75th Street to 51st Street (TR), (l) Port of Indiana, IN, and (m) CP 502, IN, to Osborne, IN.

Along with these lines, the abandoned Conrail line from Danville to Schneider, IL, will also be a PRR-Allocated Asset.

Allocated Assets: Other Aspects. Certain equipment will be included in the NYC-Allocated Assets and the PRR-Allocated Assets and will be made available to CSXT and NSR pursuant to a CSXT Equipment Agreement and a NSR Equipment Agreement, respectively. Much of the locomotive equipment and rolling stock equipment, however, will not be included in the NYC-and PRR-Allocated Assets but will be included, instead, in the Retained Assets (discussed below), and will be leased by CRC or its affiliates to NYC or PRR pursuant to equipment agreements to be negotiated by the parties.

CRC currently holds certain trackage rights over CSXT and NSR. In general (though there are exceptions), CRC will assign the trackage rights that it holds over CSXT to PRR (to be operated by NSR), and it will assign the trackage rights that it holds over NSR to NYC (to be operated by CSXT).

The shares currently owned by Conrail in TTX Company (TTX, formerly known as Trailer Train) will be allocated to NYC and PRR. Applicants' current ownership interest in TTX is: CSX, 9.345%; NS, 7.788%; CRC, 21.807%. Following approval of the primary application, the ownership of TTX by applicants and their subsidiaries will be as follows: CSX, 9.345%; NYC, 10.125%; NS, 7.788%; PRR, 11.682%.

Conrail's 50% interest in Triple Crown Services Company will be allocated to PRR.

Certain additional special treatments are provided in particular areas within the allocated assets. A description of the areas in which special arrangements are made is set forth below under the caption ''Other Areas with Special Treatments.'' [4]

Applicants indicate that they have taken steps to ensure that all of the existing contractual commitments of Conrail to its shippers will be fulfilled. The Transaction Agreement provides that all transportation contracts of CRC in effect as of the Closing Date (referred to as Existing Transportation Contracts) will remain in effect through their respective stated terms and will be allocated as NYC-Allocated Assets and PRR-Allocated Assets, and that the obligations under them shall be carried out after the Closing Date by CSXT, utilizing NYC-Allocated Assets, and by NSR, using PRR-Allocated Assets, or pursuant to the Shared Assets Areas Agreements, as the case may be. The Transaction Agreement further provides, with respect to the Existing Transportation Contracts: that CSXT and NSR will allocate the responsibilities to serve customers under these contracts; and that CSXT and NSR shall cooperate as necessary to assure shippers under these contracts all benefits, such as volume pricing, volume refunds, and the like, to which they are contractually entitled.

Retained Assets. The Retained Assets include assets contained within three Shared Assets Areas (the Detroit Shared Assets Area, the North Jersey Shared Assets Area, and the South Jersey/Philadelphia Shared Assets Area) that are more fully described below.

The Retained Assets also include Conrail's System Support Operations (SSO) facilities, including equipment and other assets associated with such facilities, currently used by Conrail to provide support functions benefitting its system as a whole, including Conrail's: (1) customer service center in Pittsburgh, PA; (2) crew management facility in Dearborn, MI; (3) system maintenance-of-way equipment center in Canton, OH; (4) signal repair center in Columbus, OH; (5) system freight claims facility in Buffalo, NY; (6) system non-revenue billing facility at Bethlehem, PA; (7) system rail welding plant at Lucknow (Harrisburg), PA; (8) system road foreman/engineer training center at Philadelphia and Conway, PA; (9) police operations center at Mt. Laurel, NJ; (10) the Philadelphia Division headquarters building and offices located at Mount Laurel, NJ; and (11) other SSO facilities identified by CSX and NS prior to the Closing Date. Each SSO Facility will be operated by Conrail for the benefit of CSXT/NYC and NSR/PRR, and the costs of operating each SSO Facility will be retained by Conrail as ''Corporate Level Liabilities'' and will be shared between CSX and NS.[5]

Liabilities. In general: NYC will assume all liabilities arising on or after the Closing Date that relate predominantly to the NYC-Allocated Assets; PRR will assume all such liabilities that relate predominantly to the PRR-Allocated Assets; CRC will be responsible for all such liabilities that do not relate predominantly to the NYC- or PRR-Allocated Assets; and CRC will also be responsible for certain liabilities arising prior to the Closing Date.

Separation Costs (as defined in the Transaction Agreement, *see* CSX/NS–25, Volume 8B at 20) incurred following the Control Date in connection with Conrail agreement employees now working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while Separation Costs incurred in connection with Conrail agreement employees now

[4] The Transaction Agreement also contemplates that certain CRC facilities currently used for the benefit of the entire Conrail system: will be operated, during a transition period following the Closing Date, for the joint benefit of CSX and NS; and will be operated, after such transition period, for the party to whom they have been allocated. *See* CSX/NS–18 at 11 (lines 14–18) and 12 (line 1 & n.3).

[5] At least some of the SSO Facilities will apparently be operated for the joint benefit of CSX and NS ''for a short period'' only. *See* CSX/NS–18 at 12 (lines 2–5).

working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS. Separation Costs incurred in connection with Conrail agreement employees working jobs at or in respect of Retained Assets will be shared by CSX and NS. Separation Costs incurred following the Control Date for Conrail agreement employees at Conrail's Altoona and Hollidaysburg shops will be the responsibility of NS, and Separation Costs incurred following the Control Date in connection with agreement employees at Conrail's Philadelphia headquarters and technology center and Conrail's Pittsburgh customer service center will be the responsibility of CSX. Separation Costs for eligible Conrail non-agreement employees will be shared by CSX and NS.

After the Closing Date, compensation and other expenses (excluding Separation Costs) for agreement employees (other than certain Conrail employees performing general and administrative functions) working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while such expenses for such agreement employees working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS.

Operation of Assets

Applicants indicate: that CSXT and NYC will enter into the CSXT Operating Agreement, which provides for CSXT's use and operation of the NYC-Allocated Assets; that NSR and PRR will enter into the NSR Operating Agreement, which provides for NSR's use and operation of the PRR-Allocated Assets; and that CRC, NYC, PRR, CSXT and/or NSR will enter into Shared Assets Areas Operating Agreements, which provide for the operation of certain Shared Assets Areas for the benefit of both CSXT and NSR.

CSXT and NSR Operating Agreements. The CSXT Operating Agreement and the NSR Operating Agreement (collectively, the Allocated Assets Operating Agreements) provide that CSXT and NSR will each have the right, for an initial term of 25 years, to use and operate, as part of their respective systems, the NYC-Allocated Assets and the PRR-Allocated Assets. Those agreements will require CSXT and NSR each to bear the responsibility for and the cost of operating and maintaining their respective Allocated Assets. CSXT and NSR will each receive for its own benefit and in its own name all revenues and profits arising from or associated with the operation of its Allocated Assets.

CSXT will pay NYC an operating fee based on the fair market rental value of the NYC-Allocated Assets. NSR will similarly pay PRR an operating fee based on the fair market rental value of the PRR-Allocated Assets. CSXT and NSR will have the right to receive the benefits of NYC and PRR, respectively, under any contract or agreement included in the NYC-Allocated Assets or the PRR-Allocated Assets, respectively, and, with the consent of NYC and PRR, respectively, to modify or amend any such contract or agreement on behalf of NYC and PRR.

CSXT and NSR will each have the right to renew its Allocated Assets Operating Agreement for two additional terms of ten years each. The Allocated Assets Operating Agreements contemplate that, upon termination of the agreements, CSXT and NSR will be deemed to have returned their Allocated Assets to NYC or PRR, subject to any regulatory requirements.

Shared Assets Areas and Operating Agreements. Both CSXT and NSR will be permitted to serve shipper facilities located within the three Shared Assets Areas (North Jersey, South Jersey/Philadelphia, and Detroit), which will be owned, operated, and maintained by CRC for the exclusive benefit of CSX and NS. CSXT and NSR will enter into a Shared Assets Area Operating Agreement with CRC in connection with each of the Shared Assets Areas, and CRC will grant to CSXT and NSR the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the Shared Assets Areas. CSXT and NSR will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the Shared Assets Areas. Other carriers that previously had access to points within the Shared Assets Areas will continue to have the same access as before.

(1) The North Jersey Shared Assets Area encompasses all northern New Jersey trackage east of and including the NEC, and also: (a) Certain line segments north of the NEC as it turns East to enter the tunnel under the Hudson River, (b) the CRC Lehigh line west to Port Reading Junction, (c) the rights of CRC on the New Jersey Transit Raritan line, (d) the CRC Port Reading Secondary line west to Bound Brook, (e) the CRC Perth Amboy Secondary line west to South Plainfield, and (f) the NEC local service south to the Trenton area.

(2) The South Jersey/Philadelphia Shared Assets Area encompasses all CRC ''Philadelphia'' stations and stations within the Philadelphia City limits, industries located on the CRC Chester Industrial and Chester Secondary tracks, all CRC trackage in Southern New Jersey, CRC's rights on the NEC north from Zoo Tower in Philadelphia to Trenton, NJ, and the Ameriport intermodal terminal and any replacement of such terminal built substantially through public funding.

(3) The Detroit Shared Assets Area encompasses all CRC trackage and access rights east of the CP-Townline (Michigan Line MP 7.4) and south to and including Trenton (Detroit Line MP 20).[6]

Other Areas with Special Treatments. A number of other areas, though not referred to as Shared Assets Areas, are nevertheless subject to special arrangements that provide for a sharing of routes or facilities to a certain extent.

(1) Monongahela Area: Although the CRC lines formerly a part of the Monongahela Railway will be operated by NSR, CSXT will have equal access for 25 years, subject to renewal, to all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern.

(2) Chicago Area: Both CSXT and NSR will have access to CRC's rights concerning access to and use of the Willow Springs Yard of The Burlington Northern and Santa Fe Railway Company (BNSF); applicants will enter into an agreement concerning their respective rights as successors to Conrail and as parties controlling the controlling shareholder in the Indiana Harbor Belt Railway (IHB), a 51%-owned subsidiary of CRC (the stock of IHB will be a CRC-retained asset); certain trackage rights of CRC over IHB will be assigned or made available to NYC to be operated by CSXT or to PRR to be operated by NSR; CSXT and NSR will enter into an agreement to permit each of them to maintain current access and trackage rights enjoyed by them over terminal railroads in the Chicago area; and CSX will be granted an option, exercisable if CSXT and BNSF come under common control, to purchase the Streator Line from Osborne, IN, to Streator, IL.

(3) Ashtabula Harbor Area: NSR will have the right to operate and control CRC's Ashtabula Harbor facilities, with CSXT receiving use and access, up to a proportion of the total ground storage, throughput, and tonnage capacity of 42%.

[6] For a more complete description of the three Shared Assets Areas, *see* CSX/NS–18 at 46–49 (and references there cited).

(4) Buffalo Area: CSXT will operate Seneca Yard, and NSR will receive access to yard tracks in that yard.

(5) Cleveland Area: CRC's switching yard at Collinwood will be operated by CSXT and its Rockport Yard will be operated by NSR.

(6) Columbus, OH: NSR will operate CRC's Buckeye Hump Yard, and CSXT will operate the former Local Yard and intermodal terminal at Buckeye.

(7) Erie, PA: Norfolk and Western Railway Company (NW, a wholly owned NSR subsidiary) will have a permanent easement and the right to build a track on the easement along the CRC right of way through Erie, PA, to be operated by CSXT. NW will have trackage rights in Erie to connect its route from Corry to its existing Buffalo-Cleveland line if such connection can be achieved without using the CRC Buffalo-Cleveland line to be operated by CSXT.

(8) Fort Wayne, IN: CSX will operate the line between Fort Wayne and Chicago, currently owned by NSR.

(9) Indianapolis, IN: NSR will have overhead trackage rights from Lafayette and Muncie to Hawthorne Yard to serve, via CSXT switch, shippers that presently receive service from two railroads.

(10) Toledo, OH: CRC's Stanley Yard will be operated by CSXT, and its Airline Junction Yard will be operated by NSR.

(11) Washington, D.C.: CRC's Landover Line from Washington, D.C., to Landover, MD, will be allocated to NYC, and NSR will be given overhead trackage rights.

(12) Allocation of Rights with Respect to Freight Operations Over Amtrak's NEC: CRC's NEC overhead trackage rights north of New York (Penn Station) will be assigned to NYC. Both NYC and PRR will have overhead rights to operate trains between Washington, D.C., and New York (Penn Station), subject to certain limitations. From Zoo Tower, Philadelphia, to Penn Station, NY, CRC's NEC rights to serve local customers will be part of the Retained Assets and CRC will assign those rights to NYC and PRR, with NYC and PRR having equal access to all local customers and facilities. Between Washington, D.C., and Zoo Tower, Philadelphia, CRC's NEC rights to serve local customers will be assigned to PRR. The right to serve local customers on the NEC north of New York (Penn Station) will be assigned to NYC.[7]

[7] For a more complete description of the areas addressed here under the heading ''Other Areas with Special Treatments,'' *see* CSX/NS–18 at 49–54 (and references there cited).

Succession to Conrail Activities

Applicants intend that the Allocated Assets conveyed to NYC and PRR will be operated for them by CSXT and NSR, respectively, and that both the Allocated Assets conveyed to NYC and PRR as well as the Retained Assets made available by CRC to CSXT or NSR or both will be enjoyed and used by CSXT and NSR (subject to the terms of the governing agreements) as if the carrier in question were itself CRC. Applicants similarly intend that the Shared Assets Areas will be used, enjoyed, and operated as fully by CSXT and NSR as if each of them were CRC.

The Continuing Conrail Activities

From the Closing Date forward, CSXT and NSR will be responsible for all of the operating expenses and new liabilities attributable to the assets which they are operating. It is expected, however, that most of the pre-Closing Date liabilities of CRC, CRR, and their subsidiaries will remain in place. It is contemplated that CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the Shared Assets Areas. Applicants expect that such payments will be sufficient to permit CRC and its subsidiaries (1) to cover their operating, maintenance, and other expenses, (2) to pay all of their obligations as they mature, (3) to provide dividends to CRR sufficient to permit it to discharge its debts and obligations as they mature, and (4) to receive a fair return for the operation, use, and enjoyment by CSXT and NSR of the Allocated Assets and Shared Assets Areas. Applicants add, however, that if for any reason these sources of funds to CRC and CRR prove insufficient to permit them to pay and discharge their obligations, CSX and NS have agreed that CRR Holdings shall provide the necessary funds, which it will obtain from CSXC and NSC.

Applicants anticipate that, following the Division of Conrail, approximately 350 employees will be employed by Conrail in the Philadelphia area (where the headquarters of CRR and CRC are now located). These employees will include Conrail employees managing and operating trains for CSX and NS, the employees in the local Shared Assets Area, and the management personnel for the continuing Conrail functions. In addition, each of CSX and NS anticipates establishing a regional headquarters-type function in Philadelphia at which an undetermined number of additional personnel will be employed.

It is intended that, following the Division: CRC will not hold itself out to the public as performing transportation services directly and for its own account; CRC will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services; and all transportation services performed by CRC will be performed as agent or subcontractor of CSXT or NSR.

''2-to-1'' Situations

Applicants claim: that the division of Conrail proposed in the primary application has enabled applicants to avoid, ''wherever possible,'' situations where shippers will see their rail options decline from two carriers to one; and that in ''virtually all of the few'' 2-to-1 situations that the division proposed in the primary application would otherwise have entailed, CSX and NS have agreed to provide one another with trackage and/or haulage rights that will permit the continuation of two rail carrier service. *See* CSX/NS–18 at 4. *See also* CSX/NS–18 at 74–75 (CSX will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by CSX) and 80 (NS will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by NS).

Labor Impact

Applicants have provided three Labor Impact Exhibits, each using a different base line in calculating the impacts that the transactions proposed in the primary application and the related filings will have on rail carrier employees. *See* CSX/NS–26 (filed July 7, 1997), which: (a) corrects the single Labor Impact Exhibit filed with the primary application itself on June 23, 1997, *see* CSX/NS–18 at 24–25; CSX/NS–20, Volume 3A at 485–546; and CSX/NS–20, Volume 3B at 493–526; and (b) adds two additional Labor Impact Exhibits. *See also* Decision No. 7, served May 30, 1997, slip op. at 8–9 (we required applicants to use the year 1995 as the base line for setting forth the impacts the proposed transactions will have on rail carrier employees, but we added that applicants, if they were so inclined, would be allowed to supplement 1995 data with data demonstrating employment reductions in 1996 and/or 1997).

Applicants' 1996/97 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,090 jobs and the creation of 1,109 jobs (for a net loss of 1,981 jobs), and will also result in the transfer of an additional 2,323 jobs. *See* CSX/NS–26, 1996/97 Exhibit at 13. The 1996/97 Exhibit is based on an April 1, 1997 nonagreement employee count and a November 1996 agreement employee count.

Applicants' 1996 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,822 jobs and the creation of 1,152 jobs (for a net loss of 2,670 jobs), and will also result in the transfer of an additional 2,323 jobs. *See* CSX/NS–26, 1996 Exhibit at 16. The 1996 Exhibit is based on calendar year 1996 average monthly employment levels.[8]

Applicants' 1995 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 6,654 jobs and the creation of 1,699 jobs (for a net loss of 4,955 jobs), and will also result in the transfer of an additional 2,288 jobs. *See* CSX/NS–26, 1995 Exhibit at 33. The 1995 Exhibit is based on calendar year 1995 average monthly employment levels. *But see* CSX/NS–26, Peifer/Spenski V.S. at 1 n.1 (1995 data is incomplete).

Applicants emphasize that the projections contained in their Labor Impact Exhibits are short term projections; applicants maintain that, in the long term, the transactions proposed in the primary application and the related filings will provide opportunities for rail transportation growth and, therefore, new jobs. Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filings, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. *See* CSX/NS–18 at 25.

Relief Requested in the Primary Application

In the STB Finance Docket No. 33388 lead docket, applicants seek: approval of the transaction proposed in the primary application (in paragraph 1 below); approval of certain ''elements'' of that transaction, referred to as Transaction Elements (in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 below); and a ''fairness determination'' respecting the terms under which CSX and NS have acquired all of the common stock of CRR (in paragraph 12 below).

(1) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by CSXC and NSC (each a noncarrier corporation controlling one or more rail carriers) of joint control of, and the power to exercise joint control over, CRR (also a noncarrier corporation controlling one or more rail carriers). *See* 49 U.S.C. 11323(a)(5).[9]

(2) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by NYC and PRR of, and of the operation by CSXT and NSR over, the CRC lines and other assets, including without limitation trackage and other rights, that will be allocated to NYC and PRR, respectively. Applicants also ask that we expressly provide that, pursuant to the sought approval and authorization under 49 U.S.C. 11323 and 11324, and notwithstanding any purported limitations on assignability, NYC and PRR each will have the same right, title, and interest in the CRC lines and other assets forming its part of the Allocated Assets as CRC itself now has, including the power to pass the use and enjoyment of those lines and other assets to CSXT and NSR.[10]

(3) Applicants request a declaratory order that 49 U.S.C. 10901 does not apply to the transfer of the Allocated Assets to NYC and PRR.[11] Applicants concede that, because NYC and PRR are not now carriers, an argument can be made that authority under 49 U.S.C. 10901 is required for the transfer; applicants maintain, however, that the transfer should be viewed in context as simply a part of a larger transaction involving the operation by CSX and NS of the assets to be transferred to NYC and PRR, respectively; and applicants claim that the transfer, when viewed in context, requires authorization not under 49 U.S.C. 10901 but rather under 49 U.S.C. 11323 and 11324. In the event we do not issue the sought declaratory order, applicants seek authorization for the transfer of the CRC assets to NYC and PRR: under 49 U.S.C. 10901; and, in order to bring the transfer within the scope of the immunizing power of 49 U.S.C. 11321(a), also under 49 U.S.C. 11323 and 11324.

(4) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (i) for CSXT and NSR to enter into the Allocated Assets Operating Agreements and to operate the assets held by NYC and PRR, respectively; (ii) for CSXT, NSR, and CRC to enter into the three Shared Assets Areas Operating Agreements and to operate the assets in such areas; and (iii) for CSX and NS to use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts). *See* 49 U.S.C. 11323(a)(2). See also 49 U.S.C. 11323(a)(6). Applicants also request a declaratory order, or a declaration to the same effect as a declaratory order: (a) that, by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS will have the authority to conduct operations over the routes of CRC covered by the Trackage Agreements as fully and to the same extent as CRC itself could, whether or not such routes are listed in CSX/NS–18, Appendix L (CSX/NS–18 at 216–24), and notwithstanding any clause in any such agreement purporting to limit or prohibit unilateral assignment by CRC of its rights thereunder; and (b) that, also by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS may use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts) as fully and to the same extent as CRC itself could.

(5) For the period following the transfer of CRC assets to NYC and PRR, applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (a) for CSXC, NSC, and CRR to continue to control NYC and PRR; and (b) for the common control, by CSXC, CSXT, NSC, NSR, CRR, and CRC of (i) NYC and PRR, and (ii) the carriers currently controlled by CSXC, CSXT, NSC, NSR, CRR, and CRC. Such authorization and approval will be

[8] The 1996 Labor Impact Exhibit submitted with the CSX/NS–26 filing on July 7, 1997, is a slightly corrected version of the Labor Impact Exhibit submitted with the primary application itself on June 23, 1997.

[9] As applicants note, although joint control by CSXC and NSC of Conrail as a separately functioning rail system will last only until the Division is effected, such joint control, even though transitory, requires approval and authorization under 49 U.S.C. 11323(a)(5). *See* CSX/NS–18 at 90 & n.14.

[10] The CRC lines and other assets to be allocated to NYC and PRR include both: (i) those owned by CRC; and also (ii) those not owned by CRC but operated by CRC under leases, trackage rights, and similar arrangements (such arrangements are hereinafter referred to as ''Trackage Agreements''). Because applicants are concerned that CRC's interests under some of these Trackage Agreements may be subject to limitations on assignability, approval and authorization under 49 U.S.C. 11323 and 11324 has been sought in order to bring these Trackage Agreements within the scope of the immunizing power of 49 U.S.C. 11321(a). *See Norfolk & Western Ry. Co.* v. *American Train Dispatchers' Ass'n,* 499 U.S. 117 (1991).

[11] As applicants note, the immunizing power of 49 U.S.C. 11321(a) does not extend to an authorization under 49 U.S.C. 10901.

necessary because, as applicants note: CRC, NYC, and PRR will not be part of a ''single system'' of rail carriers, and therefore authorization to control CRC will not in and of itself imply authorization to control NYC and PRR; and, although CSX will exercise day-to-day control of NYC and NS will exercise day-to-day control of PRR, the fact that certain major actions concerning NYC and PRR will remain under the control of CRC will result in an ongoing common control relationship involving CSXC, NSC, and CRR, and the subsidiaries of each.

(6) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: for the acquisition by CSXT of certain trackage rights over PRR; and for the acquisition by NSR of certain trackage rights over NYC. *See* 49 U.S.C. 11323(a)(6). The lines over which these trackage rights will run are listed in items 1.B and 1.A, respectively, of Schedule 4 to the Transaction Agreement. *See* CSX/NS–25, Volume 8B at 110–21.[12]

(7) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the trackage rights provided to CSXT, *See* CSX/NS–25, Volume 8C at 715–57, to access all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern. *See* 49 U.S.C. 11323(a)(6).[13]

(8) The trackage rights covered by paragraph 6 include, among many other such trackage rights, certain trackage rights to be acquired by NSR over the NYC Bound Brook, NJ-Woodbourne, PA line. *See* CSX/NS–25, Volume 8B at 112 (item 20). These particular trackage rights, however, are intended to be temporary in duration, and will expire, by their terms, at the end of 3 years. Applicants therefore seek authorization, pursuant to 49 U.S.C. 10903, for NSR to discontinue the Bound Brook-Woodbourne trackage rights in accordance with the terms thereof.[14]

(9) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of certain incidental trackage rights granted in connection with operations within the Shared Assets Areas. These trackage rights include: (i) trackage rights granted by CSXT to NSR and CRC; and (ii) trackage rights granted by NSR to CSXT and CRC. *See* CSX/NS–18 at 97–98. *See also* CSX/NS–25, Volume 8C at 76, 115–16, and 156.[15]

(10) To the extent that any matter concerning either (i) the joint ownership by CSX and NS of CRR, CRC, NYC, and/or PRR, or (ii) the Transaction Agreement and the Ancillary Agreements referred to therein,[16] including the provision for handling Existing Transportation Contracts, might be deemed to be a pooling or division by CSX and NS of traffic or services or of any part of their earnings, applicants request approval for such pooling or division under 49 U.S.C. 11322.[17]

(11) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, for the transfer of CRC's Streator Line from CRC to NSR/NW.[18]

(12) Applicants seek a determination that the terms under which CSX and NS, both individually and jointly, have acquired all of the common stock of CRR are fair and reasonable to the stockholders of CSXC, the stockholders of NSC, and the stockholders of CRR. *See Schwabacher* v. *United States*, 334 U.S. 192 (1948).

Related Filings

In STB Finance Docket No. 33388 (Sub-No. 1), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Crestline, OH, a connection track in the northwest quadrant of the intersection of CRC's North-South line between Greenwich, OH, and Indianapolis, IN, and CRC's East-West line between Pittsburgh, PA, and Ft. Wayne, IN. The connection will extend approximately 1,507 feet between approximately MP 75.4 on the North-South line and approximately MP 188.8 on the East-West line.[19]

In STB Finance Docket No. 33388 (Sub-No. 2), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Willow Creek, IN, a connection track in the southeast quadrant of the intersection between CSXT's line between Garrett, IN, and Chicago, IL, and CRC's line between Porter, IN, and Gibson Yard, IN (outside Chicago). The connection will extend approximately 2,800 feet between approximately MP BI–236.5 on the CSXT line and approximately MP 248.8[20] on the CRC line.[21]

[12] The trackage rights identified in Schedule 4 to the Transaction Agreement, *see* CSX/NS–25, Volume 8B at 110–21, fall into three categories: existing trackage rights held by CRC over other carriers, which are covered in paragraph 4 above; new trackage rights to be held by CSXT over PRR and by NSR over NYC, which are covered in this paragraph 6; and certain additional new trackage rights provided for in the related filings in STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, & 34), which are covered in the ''Related Filings'' discussion below. *See* CSX/NS–18 at 96 n.17.

[13] Applicants indicate, *see* CSX/NS–18 at 96 (lines 9–10), that the rights referenced in paragraphs 6 and 7 fall under 49 U.S.C. 11323(a)(2) (approval and authorization required for a ''purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers''). The rights referenced in paragraphs 6 and 7, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6) (approval and authorization required for the acquisition ''by a rail carrier of trackage rights over, * * * or joint use of, a railroad line * * * owned or operated by another rail carrier'').

[14] Applicants indicate that, in due course, NSR will ''abandon'' its Bound Brook-Woodbourne trackage rights. *See* CSX/NS–18 at 96–97 (item e) and 103 (item e). We think it would be more accurate to say that NSR will ''discontinue'' these trackage rights.

[15] Applicants indicate, *see* CSX/NS–18 at 98 (lines 1–2), that the rights referenced in paragraph 9 fall under 49 U.S.C. 11323(a)(2). The rights referenced in paragraph 9, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6).

[16] As used in the Transaction Agreement, the term ''Ancillary Agreements'' means the Equipment Agreements, the CSXT Operating Agreement, the NSR Operating Agreement, the NYC LLC Agreement, the PRR LLC Agreement, the CRR Holdings LLC Agreement, the Trackage Rights Agreements, the CSXT/NSR Haulage Agreements, the Tax Allocation Agreement, the Shared Assets Agreements, and the Other Operating Agreements. *See* CSX/NS–25, Volume 8B at 10.

[17] Such approval under 49 U.S.C. 11322 is sought because, as applicants note, payments with respect to the rights granted in connection with both the Allocated Assets and the Shared Assets Areas, as well as payments for the services performed by CRC in connection with the Shared Assets Areas, are to be made by CSXT and NSR to entities (CRC or its subsidiaries) in which both CSX and NS will have economic interests.

[18] *See* Decision No. 4 (served May 2, 1997), slip op. at 7 n.16: ''The transfer of the Streator line from CRC to NSR will be considered in the lead docket because this transfer, like all aspects of the division of CRC assets between CSX and NS, is integral to, and an inseparable part of, the control transaction.'' *See also* CSX/NS–22 at 446, defining the Streator Line as the CRC line running: (i) between MP 6.3 at Osborn, IN, and MP 33.2 at Schneider, IN; and (ii) between MP 56.4 at Wheatfield, IN, and MP 186.0 at Moronts, IL.

[19] In accordance with the waiver granted in Decision No. 9, served June 12, 1997, and as indicated in the notice published in the **Federal Register** on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline connection track, if authorized, will be examined in the context of the environmental impact statement (EIS) that will be prepared by our Section of Environmental Analysis (SEA).

[20] We question the MP 248.8 designation, *see* CSX/NS–22 at 106 (line 1); our review of CRC's timetable for its Porter Branch suggests that the correct designation may be MP 246.8. We also question CSXT's assertion that the Sub-No. 2 connection track will provide a direct link between CRC and CSXT tracks ''and the parallel IHB line at Willow Creek,'' *see* CSX/NS–22 at 106 (lines 16–17); our review of CRC's timetable for its Porter Branch suggests that the link with IHB may be at Ivanhoe, not at Willow Creek.

[21] In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the **Federal Register** concurrently herewith, we will consider on an expedited basis,

In STB Finance Docket No. 33388 (Sub-No. 3), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Greenwich, OH, connection tracks in the northwest and southeast quadrants of the intersection between the CSXT line between Chicago and Pittsburgh and the CRC line between Cleveland and Cincinnati. The connection in the northwest quadrant, a portion of which will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company, will extend approximately 4,600 feet between approximately MP BG–193.1 on the CSXT line and approximately MP 54.1 on the CRC line. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately MP BG–192.5 on the CSXT line and approximately MP 54.6 on the CRC line.[22]

In STB Finance Docket No. 33388 (Sub-No. 4), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney Junction, OH, a connection track in the southeast quadrant of the intersection between the CSXT line between Cincinnati, OH, and Toledo, OH, and the CRC line between Cleveland, OH, and Indianapolis, IN. The connection will extend approximately 3,263 feet between approximately MP BE–96.5 on the CSXT line and approximately MP 163.5 on the CRC line.[23]

In STB Finance Docket No. 33388 (Sub-No. 5), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney, IL, a connection track between the UPRR north-south line between Chicago, IL, and St. Louis, MO, and the NW east-west line between Decatur, IL, and Tilton, IL. The connection, which will be in the southwest quadrant of the intersection of the two lines, will be approximately 3,256 feet in length.[24]

In STB Finance Docket No. 33388 (Sub-No. 6), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Alexandria, IN, a connection track between the CRC line between Anderson, IN, and Goshen, IN, and the NW line between Muncie, IN, and Frankfort, IN. The connection, which will be in the northeast quadrant of the intersection of the two lines, will be approximately 970 feet in length.[25]

In STB Finance Docket No. 33388 (Sub-No. 7), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Bucyrus, OH, a connection track between NW's Bellevue, OH-Columbus, OH line and CRC's Ft. Wayne, IN-Crestline, OH line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 2,467 feet in length.[26]

In STB Finance Docket No. 33388 (Sub-No. 8), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Little Ferry, NJ, two connection tracks between the CRC Selkirk-North Bergen line and the New York, Susquehanna and Western Railway (NYS&W) Paterson-Croxton line. The first connection will extend approximately 480 feet between approximately MP 5.75 on the CRC line and approximately MP 5.65 on the NYS&W line. The second connection will extend approximately 600 feet between approximately MP 4.04 on the CRC line and approximately MP 4.15 on the NYS&W line.

In STB Finance Docket No. 33388 (Sub-No. 9), CSXT and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSXT subsidiary) have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of 75th Street SW, Chicago, IL, in the southwest quadrant of the intersection of the lines of B&OCT and The Belt Railway Company of Chicago (BRC). The connection will extend approximately 1,640 feet between approximately MP DC–22.43 on B&OCT's North-South line between Cleveland and Brighton Park, and approximately MP 12.95 on BRC's East-West line between Bedford Park Yard and South Chicago Yard.

In STB Finance Docket No. 33388 (Sub-No. 10), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate a connection track in Exermont, IL, in the northwest quadrant of the intersection between CSXT's Cincinnati-East St. Louis line and CRC's Cleveland-East St. Louis line. The connection will extend approximately 3,590 feet between approximately MP BC–327.9 on the CSXT line and approximately MP 231.4 on the CRC line.

In STB Finance Docket No. 33388 (Sub-No. 11), CSXT and B&OCT have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a

in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 2) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Willow Creek connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

[22] In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the **Federal Register** concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Greenwich connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-No. 3) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Greenwich connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

[23] In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the **Federal Register** concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney Junction connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 4) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney Junction connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

[24] In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the **Federal Register** concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 5) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

[25] In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the **Federal Register** concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Alexandria connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 6) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Alexandria connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

[26] In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the **Federal Register** concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Bucyrus connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 7) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Bucyrus connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

connection track in the vicinity of Lincoln Avenue in Chicago, IL, in the northeast quadrant of the intersection of the lines of B&OCT and IHB. The connection will extend approximately 840 feet between approximately MP DC–9.5 on B&OCT's line between Cleveland and Barr Yard, and approximately MP 10.43 on IHB's line between Gibson Yard and Blue Island Jct.

In STB Finance Docket No. 33388 (Sub-No. 12), NSR has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Kankakee, IL, a connection track between the Illinois Central Railroad Company (ICR) Chicago, IL-Gibson City, IL north-south line, over which NSR has trackage rights, and the CRC Streator, IL-Schneider, IN east-west line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 1,082 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 13), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolono, IL, in the southeast quadrant of the intersection of the ICR line between Chicago, IL, and Centralia, IL, and the NW line between Decatur, IL, and Tilton, IL. The connection will be about 1,600 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 14), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Butler, IN, a connection track between NW's Detroit, MI-Fort Wayne, IN line and CRC's Elkhart, IN-Toledo, OH line. The connection, which will be in the northwest quadrant of the intersection of the two lines, will be approximately 1,750 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 15), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolleston, IN. This track, which will connect a NW line and a CRC line, will be about 930 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 16), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a double track connection at Hagerstown, MD. This track, which will connect a NW line and a CRC line, will be about 800 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 17), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Ecorse Junction (Detroit), MI. This track, which will connect a NW line and a CRC line, will be about 400 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 18), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Blasdell (Buffalo), NY, a connecting track approximately 2,500 feet in length between NW's Erie, PA-Buffalo, NY Line and CRC's Buffalo, NY-Harrisburg, PA Line.

In STB Finance Docket No. 33388 (Sub-No. 19), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Gardenville Junction (Buffalo), NY, a connecting track approximately 1,700 feet in length between CRC's Buffalo, NY-Harrisburg, PA Line and CRC's Ebenezer Secondary Track.

In STB Finance Docket No. 33388 (Sub-No. 20), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Columbus, OH, a NW–CRC connecting track approximately 1,423 feet in length. *See* CSX/NS–22 at 315 (map).

In STB Finance Docket No. 33388 (Sub-No. 21), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Oak Harbor, OH, a connecting track approximately 4,965 feet in length between, and in the northwest quadrant of the intersection of, NW's Toledo, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 22), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Vermilion, OH, a connecting track approximately 5,398 feet in length between NW's Cleveland, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 23), NW has filed a notice of exemption under 49 CFR 1180.2(d)(5) regarding a joint project involving relocation of NW's rail line running down 19th Street in Erie, PA (a distance of approximately 6.1 miles, between approximately MP B–85.10 near Downing Avenue and approximately MP B–91.25 west of Pittsburgh Avenue) to a parallel railroad right-of-way currently owned and operated by CRC that will be allocated to CSXT in connection with the primary application.

In STB Finance Docket No. 33388 (Sub-No. 24), CRC and NW have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323–25 regarding the acquisition by CRC (or by NYC) of the Fort Wayne Line, between MP 441.8 at Fort Wayne, IN, and MP 319.2 at Tolleston (Gary), IN. See CSX/NS–22 at 446 and 449 (indicating that the mileposts are as stated in the preceding sentence). But see CSX/NS–22 at 461–62 (indicating that the mileposts are MP 441.8 at Tolleston and MP 319.2 at Fort Wayne).

In STB Finance Docket No. 33388 (Sub-No. 25), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over approximately 32.7 miles of a CSXT line between Lima, OH (Erie Junction), at or near CSXT MP BE–129.2, and Sidney, OH, at or near CSXT MP BE–96.5. The trackage rights to be acquired by NW include overhead trackage rights between Lima and Sidney and local trackage rights that will allow NW to serve 2-to-1 shippers at Sidney.

In STB Finance Docket No. 33388 (Sub-No. 26), CSXC, CSXT, and The Lakefront Dock and Railroad Terminal Company (LD&RT) have filed an application seeking approval and authorization under 49 U.S.C. 11323–25 for the acquisition and exercise by CSXC and CSXT of control of LD&RT, and the common control of LD&RT and CSXT and the other rail carriers controlled by CSXT and/or CSXC. LD&RT, a Class III railroad in which CSXT and CRC each currently owns a 50% voting stock interest, operates approximately 17 miles of yard tracks at Oregon, OH.

In STB Finance Docket No. 33388 (Sub-No. 27), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 5 to 6 miles of a CSXT line between Columbus, OH (Parsons Yard), at or near CSXT MP CJ 71.5, and Scioto, OH, at or near CSXT MP CK 2.5.

In STB Finance Docket No. 33388 (Sub-No. 28), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 2.02 miles of a NW line between Columbus, OH (Watkins Yard), at or near NW MP N–696.7, and Bannon, OH, at or near NW MP N–698.72.

In STB Finance Docket No. 33388 (Sub-No. 29), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 1.4 miles of a NW line between Erie Junction (Delray), MI, at or near MP D4.4, and Ecorse Junction, MI, at or near MP D5.8.

In STB Finance Docket No. 33388 (Sub-No. 30), NW and CSXT have filed

a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 1.7 miles of a CSXT line between the connection of two CSXT lines near Washington Street at or near MP 123.7, and the connection of two CSXT lines at Pine at or near MP 122.0, in Indianapolis, IN.

In STB Finance Docket No. 33388 (Sub-No. 31), CSXC and CSXT have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25, to the extent those provisions may apply, regarding the acquisition by CSXC and CSXT of control of Albany Port Railroad Corporation (APR). APR, which operates approximately 16.5 miles of track at the Port of Albany, NY, is owned in equal 50% shares by CRC and D&H Corporation (D&H, an affiliate of Canadian Pacific Limited); and, if the primary application is approved, CRC's 50% interest in APR will be allocated to CSXT in the Division.[27]

In STB Finance Docket No. 33388 (Sub-No. 32), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 9.8 miles of the IHB McCook Branch between the connection of IHB and B&OCT at McCook, Il, at or near MP 28.5, and the connection of IHB and Canadian Pacific Rail System at Franklin Park, IL, at MP 39.3.[28]

In STB Finance Docket No. 33388 (Sub-No. 33), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over B&OCT's Barr Subdivision between the connection of the NSR Chicago Line and the B&OCT line at Pine Junction, IN (CP 497) and: (i) the connection with B&OCT's McCook Subdivision at Blue Island Junction, IL, at or near MP DC 14.9, a distance of approximately 14.9 miles; and beyond to (ii) the B&OCT/IHB connection at McCook, IL, at or near MP 28.5, a distance of approximately 13.6 miles.

In STB Finance Docket No. 33388 (Sub-No. 34), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 45.5 miles of a NW line between Bucyrus, OH, at or near NW MP S–63.0, and Sandusky, OH, at or near NW MP S–108.5. The trackage rights to be acquired by CSXT, although described as ''overhead'' trackage rights, will allow CSXT to access 2-to-1 shippers at Sandusky.

In STB Docket Nos. AB–167 (Sub-No. 1181X) and AB–55 (Sub-No. 551X), CRC and CSXT, respectively, have filed a notice of exemption under 49 CFR 1152.50 to abandon an approximately 29-mile portion of the Danville Secondary Track between MP 93.00± at Paris, IL, and MP 122.00± at Danville, IL, in Edgar and Vermilion Counties, IL. The line, which is presently owned and operated by CRC and which is proposed to be operated by CSXT pursuant to the authority sought in the primary application, traverses United States Postal Service Zip Codes 61846, 61870, 61883, 61924, and 61944.

In STB Docket No. AB–290 (Sub-No. 194X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon a line between MP SK–2.5 near South Bend, IN, and MP SK–24.0 near Dillon Junction, IN, a distance of approximately 21.5 miles in St. Joseph and La Porte Counties, IN. The line traverses or adjoins United States Postal Service Zip Codes 46613, 46614, 46619, 46536, 46554, and 46365.

In STB Docket No. AB–290 (Sub-No. 195X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP I–137.3 near Dillon Junction, IN, and MP I–158.8 near Michigan City, IN, a distance of approximately 21.5 miles in La Porte County, IN. The line traverses or adjoins United States Postal Service Zip Codes 46350 and 46360.

In STB Docket No. AB–290 (Sub-No. 196X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP TM–5.0 in Toledo, OH, and MP TM–12.5 near Maumee, OH, a distance of approximately 7.5 miles in Lucas County, OH. The line traverses or adjoins United States Postal Service Zip Codes 43612, 43613, 43606, 43607, 43609, and 43614.

In STB Docket No. AB–290 (Sub-No. 197X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon the Toledo Pivot Bridge extending between MP CS-2.8 and MP CS–3.0 near Toledo, OH, a distance of approximately 0.2 miles in Lucas County, OH. The line traverses or adjoins either United States Postal Service Zip Code 42611 or United States Postal Service Zip Code 43611 (see CSX/NS–22 at 84–86).

Primary Application and Related Filings Accepted.

We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers, and requirements. *See* 49 U.S.C. 11321–25; 49 CFR part 1180. We are also accepting for consideration all of the related filings, which are also in substantial compliance with the applicable regulations, waivers, and requirements.[29]

Public Inspection.

The primary application and all related filings, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC.

Procedural Schedule

In Decision No. 6, served May 30, 1997, and published that day in the **Federal Register** at 62 FR 29387, we adopted a procedural schedule.[30] To provide further notice to interested persons, we have attached that schedule to this decision as Appendix B and have filled in all of the dates.

Notice of Intent to Participate

Any person who wishes to participate in this proceeding as a party of record

[27] Implicit in the Sub-No. 31 docket is a request for a determination that acquisition by CSXC and CSXT of a 50% interest in APR will not enable CSXC and CSXT to ''control'' APR within the meaning of 49 U.S.C. 11323.

[28] Applicants indicate that the Sub-No. 32 trackage rights run for approximately 9.8 miles. See CSX/NS–22 at 420 and 425. By our calculations, however, these trackage rights would appear to run for approximately 10.8 miles.

[29] We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

[30] In Decision No. 9, we added to the procedural schedule adopted in Decision No. 6 by requiring applicants to file, by September 5, 1997, Preliminary Draft Environmental Assessments for the construction projects referenced in the STB Finance Docket No. 33388 (Sub-Nos. 1, 2, 3, 4, 5, 6, and 7) embraced dockets. As indicated in the notice published in the **Federal Register** on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. As indicated in the notices published in the **Federal Register** concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively; and (ii) operation thereover by applicants. As further indicated in the notice published on July 11, 1997, and in the notices published concurrently herewith, the operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline, Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

(POR) must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives.

We will serve, as soon as practicable after August 7, 1997, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record will also be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Leventhal and all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs) and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a POR.

As noted in Decision No. 6, slip op. at 5, 62 FR at 29389, we will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 289–4357.[31]

Descriptions of, and Petitions Respecting, Responsive (Including Inconsistent) Applications

Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180),[32] railroads intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 22, 1997. The description must state that the commenting railroad intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a prefiling notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 22, 1997. Each responsive (including inconsistent) application filed and accepted will be consolidated with the primary application in this proceeding. Parties should contact the Office of the Secretary, Case Control Unit, at 202–565–1681 to obtain docket numbers for their responsive (including inconsistent) applications.

Any responsive (including inconsistent) applicant must file, by October 1, 1997, either: (1) A verified statement that the responsive (including inconsistent) application will have no significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application. *See* Decision No. 6, slip op. at 3–4, 62 FR at 29388–89.

Responsive (Including Inconsistent) Applications, Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument

Any interested persons, including the U.S. Secretary of Transportation and the U.S. Attorney General, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications, no later than October 21, 1997. This deadline applies to comments, etc., addressing either the primary application or any of the related filings submitted with the primary application. An original and 25 copies of such comments, etc., must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, as previously noted, parties are also requested to submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Secretary of Transportation, the U.S. Attorney General, Judge Leventhal, applicants' representatives, and all other parties of record.

Written comments, etc., shall include: (1) The docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

Other Dates

The procedural schedule adopted in Decision No. 6 further provides: (1) that rebuttal in support of the primary application, or in support of any of the related filings, must be filed by December 15, 1997; (2) that responses to any responsive (including inconsistent) applications, as well as responses to all comments, protests, requests for conditions, and other opposition evidence and argument, must also be filed by December 15, 1997; (3) that rebuttal in support of any responsive (including inconsistent) applications must be filed by January 14, 1998; (4) that briefs may be filed by February 23, 1998; (5) that oral argument will be

[31] An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: ''Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order.'' *See* 49 CFR 1180.4(a)(3), as recently amended in *Railroad Consolidation Procedures—Modification of Fee Policy*, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order heretofore entered in this proceeding.

[32] *See* Decision No. 2, served April 21, 1997, and published that day in the **Federal Register** at 62 FR 19390.

heard on April 9, 1998; (6) that, at the discretion of the Board, a voting conference will be held on April 14, 1998; and (7) that the final written decision, addressing the primary application and the related filings, and also addressing any responsive (including inconsistent) applications, will be served on June 8, 1998.

Dates Respecting Abandonments

We will process the abandonments proposed by applicants in accordance with the overall procedural schedule, rather than applying the procedural schedules required by 49 U.S.C. 10904 and our 49 CFR part 1152 abandonment regulations.[33] Therefore, with respect to each related abandonment proposal: (1) in order to be designated a party of record (POR), a person must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate along with a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives; (2) opposition submissions, requests for public use conditions,[34] and/or Trails Act requests[35] must be filed by October 21, 1997; (3) rebuttal in support of the abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, must be filed by December 15, 1997; (4) as with the primary application and all related matters, briefs may be filed by February 23, 1998, oral argument will be held on April 9, 1998, and a voting conference will be held, at the Board's discretion, on April 14, 1998; and (5) if, in the final decision served on June 8, 1998, we approve the primary application, we shall also address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we exempt any of the abandonment proposals, we shall require interested persons to file, no later than 10 days after the date of service of the final decision, offers of financial assistance[36] with respect to any of the exempted abandonments.

Discovery

In Decision No. 1, served April 16, 1997, this proceeding was assigned to Judge Leventhal for the handling of all discovery matters and the initial resolution of all discovery disputes. In Decision No. 10, served June 27, 1997, Judge Leventhal adopted discovery guidelines to govern the conduct of discovery in this proceeding.

Deadlines Applicable to Appeals and Replies

As noted in Decision No. 6, slip op. at 7, 62 FR at 29390: any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision; any response to any such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

Environmental Review Process Scope

By notice served July 3, 1997, and published in the **Federal Register** on July 7, 1997, at 62 FR 36332, the Board's Section of Environmental Analysis (SEA): (a) provided notice to interested persons that, to evaluate and consider the potential environmental impacts that may result from the transactions proposed in the primary application and in the related filings, SEA intends to prepare an environmental impact statement (EIS); (b) set out the draft scope of the EIS that SEA intends to prepare; (c) directed that written comments respecting the draft scope be filed by August 6, 1997; and (d) set forth projected time frames for conducting the EIS process.

Electronic Submissions

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or convertible into, WordPerfect 7.0. Spreadsheets must be in, or convertible into, Lotus 1–2–3 Version 7.[37] Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[38]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 33388, and the related filings in the various embraced dockets listed in Appendix A, are accepted for consideration.

2. The parties shall comply with the procedural requirements described in this decision.

3. Any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days of the date of filing of the appeal.

4. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

5. This decision is effective on July 23, 1997.

Decided: July 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

Appendix A—Embraced Proceedings

This decision covers both the STB Finance Docket No. 33388 lead proceeding and the following embraced proceedings:

STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Crestline, OH;*

STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Willow Creek, IN;*

[33] All references herein to our 49 CFR part 1152 abandonment regulations are to our new regulations, which took effect on January 23, 1997. *See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903,* STB Ex Parte No. 537, 61 FR 67876 (Dec. 24, 1996), 62 FR 34669 (June 27, 1997).

[34] *See* 49 CFR 1152.28 (61 FR at 67894).

[35] *See* 49 CFR 1152.29 (61 FR at 67894–96).

[36] *See* 49 CFR 1152.27 (61 FR at 67891–94).

[37] Parties intending to submit spreadsheets in formats other than Lotus 1–2–3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible into Lotus 1–2–3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565–1613.

[38] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Tracks at Greenwich, OH;*

STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Sidney Junction, OH;*

STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Union Pacific Railroad Company at Sidney, IL;*

STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Alexandria, IN;*

STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Bucyrus, OH;*

STB Finance Docket No. 33388 (Sub-No. 8), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Little Ferry, NJ;*

STB Finance Docket No. 33388 (Sub-No. 9), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company—Construction and Operation Exemption—Connection Track at 75th Street SW, Chicago, IL;*

STB Finance Docket No. 33388 (Sub-No. 10), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Exermont, IL;*

STB Finance Docket No. 33388 (Sub-No. 11), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company—Construction and Operation Exemption—Connection Track at Lincoln Avenue, Chicago, IL;*

STB Finance Docket No. 33388 (Sub-No. 12), *Norfolk Southern Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Kankakee, IL;*

STB Finance Docket No. 33388 (Sub-No. 13), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Illinois Central Railroad Company at Tolono, IL;*

STB Finance Docket No. 33388 (Sub-No. 14), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Butler, IN;*

STB Finance Docket No. 33388 (Sub-No. 15), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Tolleston, IN;*

STB Finance Docket No. 33388 (Sub-No. 16), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Hagerstown, MD;*

STB Finance Docket No. 33388 (Sub-No. 17), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Ecorse Junction (Detroit), MI;*

STB Finance Docket No. 33388 (Sub-No. 18), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Blasdell (Buffalo), NY;*

STB Finance Docket No. 33388 (Sub-No. 19), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Gardenville Junction (Buffalo), NY;*

STB Finance Docket No. 33388 (Sub-No. 20), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Columbus, OH;*

STB Finance Docket No. 33388 (Sub-No. 21), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Oak Harbor, OH;*

STB Finance Docket No. 33388 (Sub-No. 22), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track With Consolidated Rail Corporation at Vermilion, OH;*

STB Finance Docket No. 33388 (Sub-No. 23), *Norfolk and Western Railway Company—Joint Relocation Project Exemption—Over CSX Transportation, Inc. (Currently Consolidated Rail Corporation) at Erie, PA;*

STB Finance Docket No. 33388 (Sub-No. 24), *Consolidated Rail Corporation— Acquisition Exemption—Line Between Fort Wayne, IN, and Tolleston (Gary), IN;*

STB Finance Docket No. 33388 (Sub-No. 25), *Norfolk and Western Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 26), *CSX Corporation and CSX Transportation, Inc.—Control—The Lakefront Dock and Railroad Terminal Company;*

STB Finance Docket No. 33388 (Sub-No. 27), *Norfolk and Western Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 28), *CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Company;*

STB Finance Docket No. 33388 (Sub-No. 29), *CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Company;*

STB Finance Docket No. 33388 (Sub-No. 30), *Norfolk and Western Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 31), *CSX Corporation and CSX Transportation, Inc.—Control Exemption—Albany Port Railroad Corporation;*

STB Finance Docket No. 33388 (Sub-No. 32), *Norfolk and Western Railway Company—Trackage Rights Exemption—The Baltimore and Ohio Chicago Terminal Railroad Company;*

STB Finance Docket No. 33388 (Sub-No. 33), *Norfolk and Western Railway Company—Trackage Rights Exemption—The Baltimore and Ohio Chicago Terminal Railroad Company;*

STB Finance Docket No. 33388 (Sub-No. 34), *CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Company;*

STB Docket No. AB–167 (Sub-No. 1181X), *Consolidated Rail Corporation— Abandonment Exemption—In Edgar and Vermilion Counties, IL;*

STB Docket No. AB–55 (Sub-No. 551X), *CSX Transportation, Inc.—Abandonment Exemption—In Edgar and Vermilion Counties, IL;*

STB Docket No. AB–290 (Sub-No. 194X), *Norfolk and Western Railway Company—Abandonment Exemption—Between South Bend and Dillon Junction in St. Joseph and La Porte Counties, IN;*

STB Docket No. AB–290 (Sub-No. 195X), *Norfolk and Western Railway Company—Abandonment Exemption—Between Dillon Junction and Michigan City in La Porte County, IN;*

STB Docket No. AB–290 (Sub-No. 196X), *Norfolk and Western Railway Company—Abandonment Exemption—Between Toledo and Maumee in Lucas County, OH; and*

STB Docket No. AB–290 (Sub-No. 197X), *Norfolk and Western Railway Company—Abandonment Exemption—Toledo Pivot Bridge in Lucas County, OH.*

Appendix B: Procedural Schedule

May 16, 1997 Preliminary Environmental Report filed.

June 23, 1997 Primary application and related filings filed. Environmental Report filed.

July 23, 1997 Publication in the **Federal Register**, by this date, of: notice of acceptance of primary application and related filings; and notice of the five related abandonment filings.

August 6, 1997 Comments on the draft scope of the Environmental Impact Statement due.[39]

August 7, 1997 Notice of intent to participate in proceeding due.

August 22, 1997 Description of anticipated responsive (including inconsistent) applications due; petitions for waiver or clarification due with respect to such applications.

September 5, 1997 Preliminary Draft Environmental Assessments for the construction projects referenced in Decision No. 9 due.

October 1, 1997 Responsive Environmental Report and Environmental Verified Statements of responsive (including inconsistent) applicants due.

October 21, 1997 Responsive (including inconsistent) applications due. All comments, protests, and requests for conditions, and any other opposition evidence and argument, due.[40] Comments of the U.S. Secretary of Transportation and the U.S. Attorney General due. With respect to all related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.

November 20, 1997 Notice of acceptance (if required) of responsive (including inconsistent) applications published in the **Federal Register**.

December 15, 1997 Response to responsive (including inconsistent) applications due. Response to comments, protests, requested conditions, and other opposition evidence and argument due. Rebuttal in support of primary application and related filings due. With respect to all related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.

January 14, 1998 Rebuttal in support of responsive (including inconsistent) applications due.

February 23, 1998 Briefs due, all parties (not to exceed 50 pages).

April 9, 1998 Oral argument (close of record).

April 14, 1998 Voting conference (at Board's discretion).

June 8, 1998 Date of service of final decision. With respect to any exempted abandonments: offers of financial assistance may be filed no later than 10 days after the date of service of the final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents, subject to protective order, will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive (including inconsistent) applications will begin immediately upon their filing.

[FR Doc. 97–19372 Filed 7–22–97; 8:45 am]

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[39] *See* the notice served July 3, 1997, and published in the **Federal Register** on July 7, 1997, at 62 FR 36332. As indicated in that notice, slip op. at 3, 62 FR at 36333, it is not necessary to be a party of record to file comments on the draft scope of the EIS and/or to participate in the environmental review process.

[40] As indicated in the notice published in the **Federal Register** on July 11, 1997 (62 FR 37331), petitions for reconsideration with respect to the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket, and/or operation thereover by CSXT, are due by July 31, 1997. As indicated in the notices published in the **Federal Register** concurrently herewith, comments respecting the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively, and/or operation thereover by applicants, are due by August 22, 1997.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 3)]

CSX Transportation, Inc.—Construction and Operation Exemption—Connection Tracks at Greenwich, OH

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of exemption; request for comments.

SUMMARY: On June 23, 1997, CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Greenwich, OH.[1] The Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns[2] involved in our approval of the construction and operation of CSXT's and CRC's Greenwich construction project sought in STB Finance Docket No. 33388 (Sub-No. 3).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by CSX and CRC on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 3) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 3), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to petitioners' representatives: Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202; and John J. Paylor, 2001 Market Street-16A, Philadelphia, PA 19101. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSXT, Norfolk Southern Corporation (NSC), Norfolk Southern Railway

[1] This proceeding is related to STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR). In CSX/NS/CR, Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow CSXT and CRC to seek approval for construction of four construction projects, including this proposed construction at Greenwich, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[2] The handling of environmental issues will be discussed below.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. *See* 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

Company (NSR), Conrail Inc. (CRR), and CRC[4] filed their primary application in the CSX/NS/CR proceeding seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail; and (b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable ''everything goes together'' rule.[5] The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Greenwich, OH, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, CSXT and CRC have filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate connection tracks in Greenwich, OH.[6] CSXT and CRC cross each other at Greenwich. CSXT and CRC propose to construct connection tracks in the northwest and southeast quadrants between CSXT's main line and CRC's main line at Greenwich. The connection in the northwest quadrant will extend approximately 4,600 feet between approximately milepost BG–193.1 on CSXT's main line between Chicago, IL, and Pittsburgh, PA, and approximately milepost 54.1 on CRC's main line between Cleveland and Cincinnati, OH. A portion of this connection in the northwest quadrant will be constructed on the existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately milepost BG–192.5 on CSXT's main line and approximately milepost 54.6 on CRC's main line. CSXT anticipates that it must acquire approximately 0.4 acres of right-of-way to construct these connections. A map showing the proposed connections at Greenwich is attached as Exhibit A to CSXT's petition.[7]

Under 49 U.S.C. 10901, a railroad may: (1) Construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) Application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

CSXT and CRC contend that exemption of its proposed construction and operation at Greenwich meets all of the elements of the rail transportation policy. Petitioners maintain that, by minimizing the regulatory expense and time inherent in a full application under the provisions of section 10901, exemption will expedite regulatory decisions and reduce regulatory barriers to entry into the industry. They state that exemption will also foster efficient management and promote a safe and efficient rail system. They also indicate that, if the Board approves the primary application, one of CSXT's most important service lanes will be its Northeastern Gateway route extending from Chicago to Albany, NY, with branches eastward to Boston and southward to Newark, NJ. This service lane will combine CSXT's current main line route from Chicago to Greenwich, and CRC's line between Greenwich and Albany. The lines comprising this service lane currently contain some of the most heavily traveled track on the proposed CSXT combined system. CSXT anticipates that traffic on this corridor will be as high as 50 trains per day within the next 3 years.

CSXT and CRC state that the proposed connections at Greenwich are of paramount importance if CSXT's Northeastern Gateway service lane is to operate as anticipated. The connection track to be constructed in the northwest quadrant will connect these two main lines and allow the traffic to flow between Chicago and points in the East. CSXT anticipates that an average of 35 trains per day will operate over this connection.

To compete effectively for traffic moving to and from Chicago and points in the East, CSXT intends to establish a second auxiliary route from the East into Chicago. This service lane will be created from the existing NS line between Chicago and Fort Wayne, which CSXT will operate, and CRC's existing lines between Fort Wayne and Crestline, and between Crestline and Greenwich. CSXT states that this auxiliary route will handle primarily bulk traffic that is less time sensitive. The connection track to be constructed in the southeast quadrant at Greenwich will allow this traffic to be routed through Crestline. CSXT anticipates that an average of 9 trains per day will operate over this connection. Petitioners maintain that, without these two connections, CSXT cannot physically handle traffic between its current rail line to Chicago and the CRC lines CSXT will operate.

Petitioners state that the exemption will promote effective competition among rail carriers and with other modes, and meet the needs of the shipping public. According to petitioners, the creation of two competitive rail routes between the Northeast and Chicago is one of the most important public benefits of the proposed division of Conrail's assets. CSXT states that, by improving its operation in the Chicago area, the connections at Greenwich will assist CSXT in its competition with NSR and other modes of transportation.

The environmental report covering the proposed construction and operation of the connection tracks at Greenwich is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in

[4] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[5] *See* 49 CFR 1180.4(c)(2)(vi).

[6] CSXT filed a petition for exemption to construct and operate connection tracks in Greenwich, OH, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the CSX/NS/CR proceeding. See CSX/NS–22 (Volume 5) at 114. CSXT and CRC concurrently filed a slightly modified version of the petition for exemption for construction of connection tracks in Greenwich (CSX–7). We will consider both filings together here. As we stated in CSX/NS/CR, Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

[7] The parties indicate that they do not propose to operate over the connection at this time, and acknowledge that operation over this connection is related to, and contingent upon, the proposed control of Conrail by CSX and NS, approval of which is being sought in STB Finance Docket No. 33388.

CSX/NS/CR, Decision No. 9, CSX must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. See CSX/NS/CR, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Therefore, in deciding whether to grant petitioners' exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id.* at 8.

Should we determine that the Greenwich construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. See CSX/NS/CR, Decision No. 9, at 6; and Decision No. 5, served and published in the **Federal Register** on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection tracks in Greenwich are due August 22, 1997.

2. Replies are due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19376 Filed 7–22–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 2)]

CSX Transportation, Inc.; Construction and Operation Exemption; Connection Track at Willow Creek, IN

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of exemption; request for comments.

SUMMARY: On June 23, 1997, CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Willow Creek, IN.[1] The Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns[2] involved in our approval of the construction and operation of CSXT's and CRC's Willow Creek construction project sought in STB Finance Docket No. 33388 (Sub-No. 2).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by CSX and CRC on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 2) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 2), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001[3] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to petitioners' representatives: Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202; and John J. Paylor, 2001 Market Street—16A, Philadelphia, PA 19101. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSXT, Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and CRC[4] filed their primary application in the *CSX/NS/CR* proceeding seeking our authorization for: (a) The acquisition by CSX and NS of control of Conrail; and

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[1] This proceeding is related to STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR). In CSX/NS/CR,* Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow CSXT and CRC to seek approval for construction of four construction projects, including this proposed construction at Willow Creek, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[2] The handling of environmental issues will be discussed below.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. See 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

[4] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

(b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable ''everything goes together'' rule.[5] The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Willow Creek, IN, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, CSXT and CRC have filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate a connection track in Willow Creek, IN.[6] CSXT and CRC cross each other at Willow Creek. CSXT and CRC propose to construct a connection track in the southeast quadrant between CSXT's main line and CRC's main line. The connection will extend approximately 2,800 feet between approximately milepost BI–236.5 on CSXT's main line between Garrett, IN, and Chicago, IL, and approximately milepost 248.8[7] on CRC's main line between Porter and Gibson Yard, IN, near Chicago. CSXT anticipates that it must acquire approximately 0.2 acres of right-of-way to construct this connection. As an exhibit to its petition, CSXT attached a map showing the proposed connection at Willow Creek.[8]

Under 49 U.S.C. 10901, a railroad may: (1) Construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) Application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

CSXT and CRC contend that exemption of its proposed construction and operation at Willow Creek meets all of the elements of the rail transportation policy. Petitioners maintain that, by minimizing the regulatory expense and time inherent in a full application under the provisions of section 10901, exemption will expedite regulatory decisions and reduce regulatory barriers to entry into the industry. They state that exemption will also foster efficient management and promote a safe and efficient rail system. They also indicate that, if the Board approves the primary application, one of CSXT's most important service lanes will be its Northeastern Gateway route extending from Chicago to Albany, NY, with branches eastward to Boston and southward to Newark, NJ. This service lane will combine CSXT's current main line route from Chicago to Greenwich, OH, and CRC's line between Greenwich and Albany. The lines comprising this service lane currently contain some of the most heavily traveled track on the proposed CSXT combined system. CSXT anticipates that traffic on this corridor will be as high as 50 trains per day within the next 3 years.

CSXT and CRC state that the proposed connection at Willow Creek will facilitate the substantial traffic volume CSXT expects to move via the Northeastern Gateway route to and from Chicago. Petitioners indicate that the proposed connection at Willow Creek will provide a direct link between CRC and CSXT tracks and the parallel line of Indiana Harbor Belt Railroad (IHB) at Willow Creek.[9] The connection will allow the CRC and CSXT lines to be used interchangeably as traffic conditions warrant. Petitioners maintain that the option to switch to IHB at Willow Creek will provide a third main track into Chicago in the 20-mile segment between Porter and the Chicago Terminal at Hammond, IN. CSXT expects that an average of 11 trains per day will operate over this connection.

Petitioners state that the exemption will promote effective competition among rail carriers and with other modes, and meet the needs of the shipping public. According to petitioners, the creation of two competitive rail routes between the Northeast and Chicago is one of the most important public benefits of the proposed division of Conrail's assets. CSXT states that, by improving its operation in the Chicago area, the connection at Willow Creek will assist CSXT in its competition with NSR and other modes of transportation.

The environmental report covering the proposed construction and operation of the connection track at Willow Creek is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in *CSX/NS/CR*, Decision No. 9, CSX must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. See *CSX/NS/CR*, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served

[5] *See* 49 CFR 1180.4(c)(2)(vi).

[6] CSXT filed a petition for exemption to construct and operate a connection track in Willow Creek, IN, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the *CSX/NS/CR* proceeding. *See* CSX/NS–22 (Volume 5) at 104. CSXT and CRC concurrently filed a slightly modified version of the petition for exemption for construction of a connection track in Willow Creek (CSX–6). We will consider both filings together here. As we stated in *CSX/NS/CR*, Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

[7] CSXT should reconsider the MP 248.8 designation, *see* CSX/NS–22, at 106 (line 1); our review of CRC's timetable for its Porter Branch suggests that the correct designation may be MP 246.8.

[8] The parties indicate that they do not propose to operate over the connection at this time, and acknowledge that operation over this connection is related to, and contingent upon, the proposed control of Conrail by CSX and NS, approval of which is being sought in STB Finance Docket No. 33388.

[9] Petitioners may want to reconsider this assertion; our review of CRC's timetable for its Porter Branch suggests that the link with IHB may be at Ivanhoe, not at Willow Creek.

on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Therefore, in deciding whether to grant petitioners' exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id.* at 8.

Should we determine that the Willow Creek construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. *See CSX/NS/CR*, Decision No. 9, at 6; and Decision No. 5, served and published in the **Federal Register** on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection track in Willow Creek are due August 22, 1997.

2. Replies are due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19377 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 4)]

CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Sidney Junction, OH

AGENCY: Surface Transportation Board (Board), DOT.

ACTION: Notice of exemption; Request for comments.

SUMMARY: On June 23, 1997, CSX Transportation, Inc. (CSXT) and Consolidated Rail Corporation (CRC), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Sidney Junction, OH.[1] The Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns[2] involved in our approval of the construction and operation of CSXT's and CRC's Sidney Junction construction project sought in STB Finance Docket No. 33388 (Sub-No. 4).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by CSX and CRC on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 4) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 4), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to petitioners' representatives: Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202; and John J. Paylor, 2001 Market Street—16A, Philadelphia, PA 19101. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSXT, Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and CRC[4] filed their primary application in the *CSX/NS/CR* proceeding seeking our authorization for: (a) The acquisition by CSX and NS of control of Conrail; and (b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable ''everything goes together'' rule.[5] The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Sidney Junction, OH, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed

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[1] This proceeding is related to STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR). In CSX/NS/CR*, Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow CSXT and CRC to seek approval for construction of four construction projects, including this proposed construction at Sidney Junction, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[2] The handling of environmental issues will be discussed below.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. *See* 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

[4] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[5] *See* 49 CFR 1180.4(c)(2)(vi).

transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, CSXT and CRC have filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate a connection track in Sidney Junction, OH.[6] CSXT and CRC cross each other at Sidney Junction. CSXT and CRC propose to construct a connection track in the southeast quadrant between CSXT's main line and CRC's main line. The connection will extend approximately 3,263 feet between approximately milepost BE–96.5 on CSXT's main line between Cincinnati and Toledo, OH, and approximately milepost 163.5 on CRC's main line between Cleveland, OH, and Indianapolis, IN. CSXT anticipates that it must acquire approximately 2.6 acres of right-of-way to construct this connection. A map showing the proposed connection track at Sidney Junction is attached as Exhibit A to CSXT's petition.[7]

Under 49 U.S.C. 10901, a railroad may: (1) Construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) Application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

CSXT and CRC contend that exemption of the proposed construction and operation at Sidney Junction meets all of the elements of the rail transportation policy. Petitioners maintain that, by minimizing the regulatory expense and time inherent in a full application under the provisions of section 10901, exemption will expedite regulatory decisions and reduce regulatory barriers to entry into the industry. They state that exemption will also foster efficient management and promote a safe and efficient rail system. They also indicate that, if the Board approves the primary application, one of CSXT's extremely important service lanes will be its Memphis Gateway route combining CRC's routes in and to the Northeast with CSXT's present route between Cincinnati and Memphis, TN. According to petitioners, this service lane will provide efficient single line service between CSXT's Memphis Gateway and important markets in the eastern United States.

Petitioners indicate that the Memphis Gateway service lane will use CSXT's existing route between Memphis and Sidney, OH, via Cincinnati, and CRC's existing St. Louis line between Sidney and Cleveland, where CSXT will connect with its other service lanes going to the eastern United States. By taking advantage of increased volumes and developing reciprocal overhead blocking strategies with western roads, CSXT maintains that it can avoid classifying traffic to the Northeast at its Cincinnati and Nashville terminals. Westbound CSXT traffic originating in the East and South will be classified in blocks for movement to western points beyond Memphis.

Petitioners state that the exemption will promote effective competition among rail carriers and with other modes, and meet the needs of the shipping public. According to petitioners, the connection at Sidney Junction is crucial to the Memphis Gateway service lane. This connection will connect CSXT's Cincinnati-Toledo line with CRC's Cleveland-Indianapolis line, thus allowing single line service from the Northeast to Memphis. CSXT anticipates that an average of 9.6 trains per day will be operated over this new connection at Sidney Junction.

The environmental report covering the proposed construction and operation of the connection track at Sidney Junction is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in *CSX/NS/CR*, Decision No. 9, CSX must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. *See CSX/NS/CR*, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Therefore, in deciding whether to grant petitioners' exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id*. at 8.

Should we determine that the Sidney Junction construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id*. at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. *See CSX/NS/CR*, Decision No. 9, at 6; and Decision No. 5, served and published in the **Federal Register** on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve

[6] CSXT filed a petition for exemption to construct and operate a connection track in Sidney Junction, OH, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the *CSX/NS/CR* proceeding. *See* CSX/NS–22 (Volume 5) at 126. CSXT and CRC concurrently filed a slightly modified version of the petition for exemption for construction of a connection track in Sidney Junction (CSX–8). We will consider both filings together here. As we stated in *CSX/NS/CR*, Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

[7] The parties indicate that they do not propose to operate over the connection at this time, and acknowledge that operation over this connection is related to, and contingent upon, the proposed control of Conrail by CSX and NS, approval of which is being sought in STB Finance Docket No. 33388.

the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection track in Sidney Junction are due August 22, 1997.

2. Replies are due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19378 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33422]

Luxapalila Valley Railroad, Inc.—Trackage Rights Exemption—Columbus and Greenville Railway Company

Columbus and Greenville Railway Company (C&G) will agree to grant local and overhead trackage rights to Luxapalila Valley Railroad, Inc. (LVR)[1] over approximately 175 miles of track between Columbus and Greenville, MS.

The transaction was scheduled to be consummated on the July 14, 1997 effective date of the exemption. The purpose of the trackage rights is to enable CAGY to deploy the resources of its two subsidiary railroads more efficiently, by using their respective locomotives and crews interchangeably.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33422 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Donald G. Avery, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Decided: July 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19374 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Both C&G and LVR are Class III railroads owned by CAGY Industries, Inc. (CAGY).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 5)]

Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track with Union Pacific Railroad Company at Sidney, IL

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of exemption; request for comments.

SUMMARY: On June 23, 1997, Norfolk and Western Railway Company (NW), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Sidney, IL.[1] The Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns[2] involved in our approval of the construction and operation of NW's Sidney construction project sought in STB Finance Docket No. 33388 (Sub-No. 5).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by petitioner on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 5) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 5), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 (202) 219–2538; FAX: (202) 219–3289) and to petitioner's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), NSR, Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)[4] filed their

[1] This proceeding is related to STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR).* In *CSX/NS/CR,* Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow NSR to seek approval for construction of three construction projects, including this proposed construction at Sidney, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[2] The handling of environmental issues will be discussed below.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. See 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

[4] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as

Continued

primary application in the CSX/NS/CR proceeding seeking our authorization for: (a) The acquisition by CSX and NS of control of Conrail; and (b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable ''everything goes together'' rule.[5] The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Sidney, IL, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, NW has filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate a connection track in Sidney, IL.[6] The connection would link Union Pacific Railroad Company's (UPRR) north-south rail line between Chicago, IL, and St. Louis, MO, and NW's east-west rail line between Decatur and Tilton, IL. The track will be approximately 3,256 feet in length, occupy approximately 7.3 acres of land, and will be in the southwest quadrant of the intersection of the two lines at Sidney, IL. NW estimates that 10 trains per day will operate over the proposed track, and that the proposed construction will cost about $1.8 million. A map showing the proposed connection track at Sidney is attached as Exhibit C to NW's petition.

NW indicates that the Sidney connecting track will permit it to link the NS and Conrail rail systems to provide an efficient, less congested route, partially via UPRR, between St. Louis and eastern points on the combined system. Petitioner maintains that the connection will improve the efficiency and quality of NS's rail service by adding or expanding facilities to handle anticipated increases in rail traffic, and by improving NS's handling of through traffic between Tilton and eastern points. NW also indicates that the connection will not add new industries or territory to the combined NS/Conrail system proposed in the primary application.

Under 49 U.S.C. 10901, a railroad may: (1) Construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) Application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

NW contends that detailed scrutiny of this transaction under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. NW states that the exemption will promote that policy by enabling NS to compete more effectively and efficiently with other rail carriers, especially CSX, if the primary application is granted. According to NW, the proposed connection will increase competition, minimize the need for federal regulatory control over rates and services, and avoid undue concentrations of market power.

NW maintains that the proposed track connection will increase, rather than reduce, rail competition, and will therefore tend to reduce market power and increase the welfare of shippers. NW states that the transaction is limited in scope because the length of the track to be constructed is short (approximately 3,256 feet) and, although the connection may shorten routes or expedite traffic and provide additional interchanges between main line tracks, it will not extend the line into new territories or industries.

The environmental report covering the proposed construction and operation of the connection tracks at Sidney is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in CSX/NS/CR, Decision No. 9, NS must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. See CSX/NS/CR, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate mitigation. Therefore, in deciding whether to grant petitioner's exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id.* at 8.

Should we determine that the Sidney construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. See CSX/NS/CR, Decision No. 9, at 6; and Decision No. 5, served and published in the **Federal Register** on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption

Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[5] See 49 CFR 1180.4(c)(2)(vi).

[6] NW filed a petition for exemption to construct and operate a connection track in Sidney, IL, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the CSX/NS/CR proceeding. See CSX/NS–22 (Volume 5) at 135. NW subsequently refiled its exemption petition with the Board on June 24, 1997 (NS–4). We will consider both filings together here. As we stated in CSX/NS/CR, Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection track in Sidney are due August 22, 1997.

2. Petitioner's reply is due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19373 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 7)]

Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track with Consolidated Rail Corporation at Bucyrus, OH

AGENCY: Surface Transportation Board (Board, DOT).

ACTION: Notice of exemption; Request for comments.

SUMMARY: On June 23, 1997, Norfolk and Western Railway Company (NW), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Bucyrus, OH.[1] The Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns[2] involved in our approval of the construction and operation of NW's Bucyrus construction project sought in STB Finance Docket No. 33388 (Sub-No. 7).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by petitioner on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 7) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 7), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to petitioner's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), NSR, Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)[4] filed their primary application in the *CSX/NS/CR* proceeding seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail; and (b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable ''everything goes together'' rule.[5] The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Bucyrus, OH, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, NW has filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate a connection track at Bucyrus, OH, between Conrail's line from Ft. Wayne, IN, to Crestline, OH, and NW's line from Bellevue, OH, to Columbus, OH.[6] The connection will be approximately 2,467 feet in length, occupy approximately 5.5 acres of land, and will be in the southeast quadrant of the intersection of the two lines at Bucyrus. NW estimates that eight trains per day will operate over the proposed track, and that the proposed construction will cost about $2,264,000. A map showing the

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[1] This proceeding is related to STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR).* In *CSX/NS/CR*, Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow NSR to seek approval for construction of three construction projects, including this proposed construction at Bucyrus, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[2] The handling of environmental issues will be discussed below.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. *See* 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

[4] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[5] *See* 49 CFR 1180.4(c)(2)(vi).

[6] NW filed a petition for exemption to construct and operate a connection track in Alexandria, IN, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the *CSX/NS/CR* proceeding. *See* CSX/NS–22 (Volume 5) at 169. NW subsequently refiled its exemption petition with the Board on June 24, 1997 (NS–6). We will consider both filings together here. As we stated in *CSX/NS/CR*, Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

proposed connection track at Bucyrus is attached as Exhibit C to NW's petition.

NW indicates that the Bucyrus connecting track will permit it to link the NS and Conrail rail systems to provide an efficient, less congested route between Crestline and eastern points, and Columbus. Petitioner maintains that the connection will improve the efficiency and quality of NS's rail service by adding or expanding facilities to handle anticipated increases in rail traffic, and by improving NS's handling of through traffic via the Bucyrus connection. NW also indicates that the connection will not add new industries or territory to the combined NS/Conrail system proposed in the primary application.

Under 49 U.S.C. 10901, a railroad may: (1) Construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

NW contends that detailed scrutiny of this transaction under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. NW states that the exemption will promote that policy by enabling NS to compete more effectively and efficiently with other rail carriers, especially CSX, if the primary application is granted. According to NW, the proposed connection will increase competition, minimize the need for federal regulatory control over rates and services, and avoid undue concentrations of market power.

NW maintains that the proposed track connection will increase, rather than reduce, rail competition, and will therefore tend to reduce market power and increase the welfare of shippers. NW states that the transaction is limited in scope because the length of the track to be constructed is short (approximately 2,467 feet) and, although the connection may shorten routes or expedite traffic and provide additional interchanges between main line tracks, it will not extend the line into new territories or industries.

The environmental report covering the proposed construction and operation of the connection tracks at Bucyrus is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in *CSX/NS/CR*, Decision No. 9, NS must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. *See CSX/NS/CR*, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Therefore, in deciding whether to grant petitioner's exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id.* at 8.

Should we determine that the Bucyrus construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. *See CSX/NS/CR*, Decision No. 9, at 6; and Decision No. 5, served and published in the **Federal Register** on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection track in Bucyrus are due August 22, 1997.

2. Petitioner's reply is due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19379 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 6)]

Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track with Consolidated Rail Corporation at Alexandria, IN

AGENCY: Surface Transportation Board (Board, DOT).

ACTION: Notice of exemption; Request for comments.

SUMMARY: On June 23, 1997, Norfolk and Western Railway Company (NW), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), pursuant to 49 U.S.C. 10502, filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a connection track at Alexandria, IN.[1] The

[1] This proceeding is related to STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR). In CSX/NS/CR*, Decision No. 9, served June 12, 1997, we granted a petition for waiver that would allow NSR to seek approval for construction of three

Board seeks comments from interested persons respecting the exemption criteria and any other non-environmental concerns[2] involved in our approval of the construction and operation of NW's Alexandria construction project sought in STB Finance Docket No. 33388 (Sub-No. 6).

DATES: Written comments must be filed with the Board by August 22, 1997. Replies may be filed by petitioner on or before September 11, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 (Sub-No. 6) and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388 (Sub-No. 6), Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to petitioner's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191. Parties to STB Finance Docket No. 33388 will not be automatically placed on the service list for this proceeding.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), NSR, Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)[4] filed their primary application in the *CSX/NS/CR* proceeding seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail; and (b) division of Conrail's assets by and between CSX and NS. In Decision No. 9 in that proceeding, we granted the requests by applicants, with respect to four CSX construction projects and three NS construction projects, for waivers of our otherwise applicable ''everything goes together'' rule.[5] The waivers would allow CSX and NS to begin the physical construction following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application. This petition for exemption for the construction at Alexandria, IN, concerns one of the seven construction projects. By this notice, we are inviting comments on whether the proposed transaction meets the applicable exemption criteria and on any other non-environmental concerns regarding the construction and operation of this particular project.

Pursuant to 49 U.S.C. 10502, NW has filed a petition for exemption from the prior approval provisions of 49 U.S.C. 10901 to construct and operate a connection track in Alexandria, IN, between Conrail's line from Anderson to Goshen, IN, and NW's line from Muncie to Frankfort, IN.[6] The connection will be approximately 970 feet in length, occupy approximately 2.3 acres of land, and will be in the northeast quadrant of the intersection of the two lines. NW estimates that eight trains per day will operate over the proposed track, and that the proposed construction will cost about $1.4 million. A map showing the proposed connection track at Alexandria is attached as Exhibit C to NW's petition.

NW indicates that the Alexandria connecting track will permit it to link the NS and Conrail rail systems to provide an efficient, less congested route between Chicago, IL, and Cincinnati, OH, and on to Atlanta, GA, and points in the Southeast. Petitioner maintains that the connection will improve the efficiency and quality of NS's rail service by adding or expanding facilities to handle anticipated increases in rail traffic, and by improving NS's handling of through traffic via Alexandria and Muncie, IN. NW also indicates that the connection will not add new industries or territory to the combined NS/Conrail system proposed in the primary application.

Under 49 U.S.C. 10901, a railroad may: (1) Construct an extension to any of its railroad lines; (2) construct an additional railroad line; or (3) provide transportation over an extended or additional railroad line, only if the Board issues a certificate authorizing such activity. However, under 49 U.S.C. 10502, the Board shall exempt a rail transaction from regulation when it finds that: (1) application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

NW contends that detailed scrutiny of this transaction under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. NW states that the exemption will promote that policy by enabling NS to compete more effectively and efficiently with other rail carriers, especially CSX, if the primary application is granted. According to NW, the proposed connection will increase competition, minimize the need for federal regulatory control over rates and services, and avoid undue concentrations of market power.

NW maintains that the proposed track connection will increase, rather than reduce, rail competition, and will therefore tend to reduce market power and increase the welfare of shippers. NW states that the transaction is limited in scope because the length of the track to be constructed is short (approximately 970 feet) and, although the connection may shorten routes or expedite traffic and provide additional interchanges between main line tracks, it will not extend the line into new territories or industries.

The environmental report covering the proposed construction and operation of the connection tracks at

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construction projects, including this proposed construction at Alexandria, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[2] The handling of environmental issues will be discussed below.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. *See* 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

[4] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[5] *See* 49 CFR 1180.4(c)(2)(vi).

[6] NW filed a petition for exemption to construct and operate a connection track in Alexandria, IN, as a related filing in Volume 5 of the primary application filed on June 23, 1997, in the *CSX/NS/CR* proceeding. *See* CSX/NS–22 (Volume 5) at 152. NW subsequently refiled its exemption petition with the Board on June 24, 1997 (NS–5). We will consider both filings together here. As we stated in *CSX/NS/CR,* Decision No. 9, at 6–7:

* * * in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project. The operational implications of the merger as a whole, including operations over * * * the seven construction projects, will be examined in the context of the [Environmental Impact Statement] EIS that we are preparing for the overall merger. * * * No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

Alexandria is contained in the Environmental Report filed with the Board in STB Finance Docket No. 33388. In addition, as we required in *CSX/NS/CR*, Decision No. 9, NS must submit, no later than September 5, 1997 (Day F+75), a preliminary draft environmental assessment (PDEA) for each individual construction project covered by our waiver decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. If a PDEA is insufficient, we may require additional environmental information or reject the document. *See CSX/NS/CR*, Decision No. 9, at 8.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Therefore, in deciding whether to grant petitioner's exemption request, we will consider the entire environmental record, including all public comments, the EA, and the Post EA. *Id.* at 8.

Should we determine that the Alexandria construction project could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed control transaction in STB Finance Docket No. 33388. *Id.* at 8. As we have previously emphasized, our consideration of the seven construction projects does not, and will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application in STB Finance Docket No. 33388. *See* CSX/NS/CR, Decision No. 9, at 6; and Decision No. 5, served and published in the **Federal Register** on May 13, 1997, 62 FR 26352, slip op. at 3. If we grant any exemptions for these seven construction projects, applicants will not be allowed to argue that, because we have granted an exemption and applicants may have expended resources to construct a connection track, we should approve the primary application. Applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny an applicant's request to operate over any or all of the seven connections. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments on whether the proposed transaction meets the exemption criteria of 49 U.S.C. 10502 and on any other non-environmental concerns regarding the construction and operation of the connection track in Alexandria are due August 22, 1997.

2. Petitioner's reply is due September 11, 1997.

3. This decision is effective on the date of service.

Decided: July 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19380 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–336 (Sub–No. 6)]

Indiana Hi-Rail Corporation, Debtor—Abandonment—In Putman and Van Wert Counties, Oh, and Adams County, IN

On July 8, 1997, the Trustee of Indiana Hi-Rail Corporation, Debtor (IHRC) filed with the Surface Transportation Board, Washington, DC 20423, an application under the Bankruptcy Code, 11 U.S.C. 1170(b), to abandon two segments of a line of railroad known as the St. Mary's District Line. The line segments extend: (1) From milepost TS 65.5 near Douglas, OH, to milepost TS 73.7 at Delphos, OH (the Douglas Line Segment); and (2) from milepost TS 77.5 near Landeck, OH, to milepost TS 117.8 near Craigsville, IN (the Landeck Line Segment), a total distance of 48.5 miles, located in Putnam and Van Wert Counties, OH, and Adams County, IN. The line includes the stations of Wilshire, OH (milepost TS 99.5), Ohio City, OH (milepost TS 90.0), Ft. Jennings, OH (milepost TS 68.7), Douglas, OH (milepost TS 66.0) and Decatur, IN (milepost TS 108.0), and traverses U.S. Postal Service ZIP Codes 46731, 46733, 46780, 45898, 45874, 45894, 45833, 45844 and 45876.

Pursuant to 49 CFR 1152.24(e)(5), IHRC requests waiver of some or all of the requirements contained in: 49 CFR 1152.20(a)(3) and (4) (posting and publication requirements); 49 CFR 1152.20(b)(1) (time limits for service of the notice of intent); 49 CFR 1152.22(d) (revenue and cost data),[1] 49 CFR 1152.22(i) (Board's 20-day time frame for publication of notice in **Federal Register**); and 49 CFR 1152.26 (procedural schedule governing abandonment applications).

IHRC is a bankrupt rail carrier. The application contains sufficient information for the Board to make a recommendation report to the Bankruptcy Court.[2] Requiring IHRC to comply with these cited regulations would serve no useful purpose, but would impose an unnecessary burden on IHRC. Therefore, the waiver request will be granted.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. This line of railroad has appeared on the applicant's system diagram map (SDM) or has been included in its narrative in category 1 since July 8, 1997. Despite the fact that the line was not previously identified on an SDM filed by the applicant as would normally be required by the Board's regulations, the application will not be rejected under these circumstances in which a bankrupt carrier has submitted to the Board an abandonment application pursuant to an order of the Bankruptcy Court. See 49 CFR 1152.24(e)(1).

The interest of railroad employees will be protected by Oregon Short Line R. Co.— Abandonment—Goshen, 360 I.C.C. 91 (1979).

By order dated June 26, 1997,[3] the United States Bankruptcy Court, Southern District of Indiana, Indianapolis Division, directed the Board to respond and issue an advisory opinion on the proposed abandonment application by August 18, 1997. The Board's rules anticipate that protests or comments on an abandonment

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[1] While not adhering to the strict financial requirements of 49 CFR 1152.22(d), IHRC did calculate its avoidable costs to the extent that the financial data were available.

[2] Because the Board's role in the abandonment is advisory, IHRC is not obligated to file environmental or historic information. See 49 CFR 1105.5(c).

[3] Case No. 94–08502–B–V–11, In re Sagamore National Corporation a/k/a Indiana Hi Rail Corporation a/k/a Sagnant, Debtor.

application would be due 45 days after the filing of the application. In this case, the court's deadline is August 18, 1997 (only 41 days after the July 8, 1997 filing). In order to be in a position to make a recommendation to the court as soon as possible, a shortened procedural schedule will be adopted here. Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case). Written comments and protests must indicate the proceeding designation STB Docket No. AB–336 (Sub-No. 6) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423–0001, by August 7, 1997. Applicant's reply to opposition case must be filed by August 12, 1997. If the record that is developed permits it, the Board will be able to issue its advisory opinion by August 18, 1997, or shortly thereafter. A copy of each written comment or protest shall be served upon the representative of the applicant: Charles H. White, Jr., Galland, Kharasch & Garfinkle, P.C., Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007–4492. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. (TDD for the hearing impaired is available at (202) 565–1695.)

A copy of this notice will be mailed to the Bankruptcy Court at this address: The Honorable Larry Lessen, United States Bankruptcy Court, Southern District of Indiana, Indianapolis Division, Room 116, U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

Decided: July 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19375 Filed 7–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974; System of Records

AGENCY: Internal Revenue Service, Treasury Department.

ACTION: Notice to republish a Privacy Act system of records.

SUMMARY: The Department of the Treasury gives notice of its intent to republish the Privacy Act notice pertaining to the system of records entitled ''Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018,'' which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

EFFECTIVE DATE: July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Program Analyst, Disclosure Services, (202) 622–0930.

SUPPLEMENTARY INFORMATION: The Privacy Act system of records entitled ''Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018'' was amended by notice in the **Federal Register** on July 31, 1995, at 60 FR 39072. No comments were received in response to the amended system of records notice, and it became effective on September 11, 1995. However, the Department of the Treasury Privacy Act systems of records inventory, published on November 9, 1995, at 60 FR 56802, inadvertently published the pre-amendment version of this system of records notice. Therefore, it is necessary to republish the correct amended notice of July 31, 1995.

As required by 5 U.S.C. 552a(r), on July 21, 1995, the Department submitted a copy of the report and notice to the Committee on Governmental Affairs in the Senate; the Committee on Government Reform and Oversight in the House of Representatives, and to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

The purpose of the amendment, as originally published, was to enable the Internal Revenue Service to implement the Electronic Audit Research Log (EARL) system, which would enhance voluntary compliance through the assurance of ethical conduct by IRS employees. The July 31, 1995 amendment was also to ensure that this system of records, including the EARL system, was in compliance with the Privacy Act. Several other changes were made to the notice due to organizational changes and changes in reference to resource materials. Also, a proposed amendment to 31 CFR 1.36 was published at 60 FR 40797 on August 10, 1995, to exempt this system of records from certain provisions of the Privacy Act. The exemption is to permit the IRS to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

The system notice, as amended on July 31, 1995, is being republished in its entirety below.

Date: July 10, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration)

Treasury/IRS 34.018

SYSTEM NAME:

Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS

SYSTEM LOCATION:

National Office, District Offices, Internal Revenue Service Centers, Regional Offices, Customer Service Sites, Submission Processing Centers, Development Centers, Computing Centers, Field Information Systems Offices (FISO) and the Austin Compliance Center. (See IRS Appendix A for addresses at 60 FR 56856, November 9, 1995.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees who input or who are authorized to input IDRS transactions and (2) taxpayers whose accounts are accessed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record logs of the employees who are authorized access to IDRS and of employee inputs and inquiries processed through IDRS terminals, including record logs of employees who have accessed IDRS in a manner that appears to be inconsistent with standard IRS practice(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6103, 7602, 7801 and 7802.

PURPOSE(S):

To aid the ongoing efforts of the IRS to enhance the protection of confidential tax returns and return information from unauthorized access, by assuring the public that their tax information is being protected in an ethical and legal manner, thereby promoting voluntary taxpayer compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDINGCATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, hard copy, and optical storage media.

RETRIEVABILITY:

Indexed by employee's Social Security Number and employee identification number. Also may be retrieved by the Taxpayer Identification Number (TIN) of the taxpayer whose account is being accessed, date and time, command code, and terminal identification.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information Systems Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbook, IRM 1(15)59.1 through 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Management and Evaluation Section, Information Systems Security Program Branch, Operations Management Division, Network and Systems Management, Information Systems, National Office.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains (1) tax returns and return information, (2) account transactions and inputs to tax accounts, (3) employee user identification and profile information, (4) access record logs to accounts, and (5) data may also be retrieved from other IRS published systems of records used in the operation of this system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

[FR Doc. 97–19404 File 19404 –7–22–97; 8:45am]

BILLING CODE: 4810–25–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury

ACTION: Notice of a proposed new Privacy Act system of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed new system of records entitled ''Customer Feedback System—Treasury/IRS 00.003,'' which is subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

DATES: Comments must be received no later than August 22, 1997. The notice will be effective September 2, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Tom Tiffany, Office of the Taxpayer Advocate, National Office, Internal Revenue Service, at (202) 622–6100.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service is proposing a new system of records to implement the provisions of the recently enacted Taxpayer Bill of Rights 2 (TBOR 2). TBOR 2 requires that IRS annually report to Congress, beginning June 1, 1997, on the amount and type of taxpayer complaints against IRS employees in a given year, and their resolution. For purposes of this system of records, IRS employees include Chief Counsel employees. The records include internally identified cases, as well as taxpayer or third-party initiated complaints, either written or received in person or by telephone through management channels. The report would identify by IRS region and primary activity involved, (e.g., collection, examination), the nature of the misconduct or complaint, the number of cases received by category and the disposition of those cases. Additionally, although not required by statute, the IRS is tracking all compliments received from the private sector as a part of this database. IRS employee identifiers have been left in the system in order to relate the case with its resolution.

The definition of complaint is built on the TBOR 2 legislation and the related definition used by GAO. IRS has defined it as ''an allegation by a taxpayer or their representative that (1) an IRS employee violated a law, regulation, or standard of conduct; (2) an IRS employee used inappropriate behavior in the treatment of taxpayers in the conduct of their business; i.e., rudeness, overzealousness, excessive aggressiveness, discriminatory treatment, intimidation and the like; or (3) a system of the IRS failed to function properly or within prescribed time frames.''

In order to facilitate the Service's compliance with the legislation, the Service is creating a new Customer Feedback system of records to track the feedback. In addition to maintaining records of complaints or compliments described above, other information maintained in this system will be derived from records of the following databases: (1) Treasury/IRS 60.011—Internal Security Management Information System (ISMIS)(published on November 9, 1995 at 60 FR 56842), and (2) the Automated Labor Employee Relations Tracking System (ALERTS), which is a subset of Treasury/IRS 36.001—Appeals, Grievances, and Complaint Records; and Treasury/IRS 36.003—General Personnel and Payroll Records.

ISMIS provides the technical ability for other components within IRS to analyze trends in integrity matters on an organization, geographic and violation basis. ALERTS is a Servicewide automated data management and control system, containing information about disciplinary cases, benefits and compensation cases, agency and negotiated grievances, Inspection cases, negotiation issues, special projects and activities, third-party appeals/adjudications, unfair labor charges/complaints, and centralized employee tax compliance cases. The inclusion of these records is necessary for preparing the statistics required under TBOR 2.

The Customer Feedback System is maintained under section 6108 of the Internal Revenue Code and Section 1211 of Pub.L. 104–168, and unlike other IRS systems of records that do affect employees' rights, benefits, or entitlements this proposed system is prohibited from being used for any purpose involving the making of a determination about the individual to whom they pertain.

Accordingly, the information in this system will be exempted from disclosure provisions of the Privacy Act under (k)(4), and a proposed rule is being published separately in the **Federal Register**. The (k)(4) exemption protects the customer's identity from the

employee and conceals from the customer the action(s) taken against the employee. The records are to be used solely for statistical purposes and not to track the number of complaints against a given employee, nor will they be used for the purpose of making a determination affecting the employee's employment status.

The notice for the proposed new system of records is being published in its entirety below.

Dated: July 10, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/IRS 00.003

SYSTEM NAME:

Customer Feedback System—Treasury/IRS 00.003.

SYSTEM LOCATION:

Internal Revenue Service Centers, National Office, Regional and District Offices, including National Office Chief Counsel Offices, Regional Counsel Offices, and District Counsel Offices, the Martinsburg Computing Center, the Detroit Computing Center, and the Tennessee Computing Center, and Area Distribution Centers.

Area Distribution Center addresses are as follows: the Eastern Distribution Center, 4300 Carolina Avenue, Richmond, VA 23222, the Central Area Distribution Center, 2402 East Empire, Bloomington, IL 61799, and the Western Area Distribution Center, 3041 Sunrise Boulevard, Rancho Cordova, CA 95742. (See IRS Appendix A for other addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system consists of records relating to: (1) Individuals (customers) who make complaints and compliments about Internal Revenue Service employees; and, (2) Internal Revenue Service employees who have had complaints and compliments made about them.

CATEGORIES OF RECORDS IN THE SYSTEM:

A variety of documents and/or reports reflecting customer feedback on current and former IRS employees and the resolution of that feedback.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 1211 of PL. 104 168, TBOR 2, Reports on Misconduct of IRS Employees.

PURPOSE(S):

This system will capture customer feedback, including complaints and compliments. The capture of this data will provide a means to analyze trends to identify and take corrective action on systemic problems. The data will not be used to affect any rights or benefits of individuals in the records system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be disclosed to the tax writing Congressional committees. The purpose is to fulfill the requirements of the Taxpayer Bill of Rights 2 (TBOR 2).

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic media.

RETRIEVABILITY:

Documents are stored and retrieved by control numbers and by taxpayer name, taxpayer identification number or person to contact. The control number can be determined by reference to the entries for the individual to whom they relate.

SAFEGUARDS:

Access is limited to authorized personnel who have a direct need to know. Access controls will not be less than those provided for by the Manager's Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM (2)(10)00. This includes the use of passwords and access codes.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 206 for Service Centers, IRM 1(15)59.26 and Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Deputy Commissioner. Officials maintaining the system—Directors of Internal Revenue Service Centers; National, Regional, District Office, Regional Counsels, District Counsels, Associate Chief Counsels, and Area Distribution Center Directors. (See ''System Location'' above for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for the purpose of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

See ''Records access procedures'' above.

RECORD SOURCE CATEGORIES:

Information originates from IRS employees and customer feedback.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from 5 U.S.C. 552a(c)(3); (d) (1), (2), (3) and (4), (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(4).

[FR Doc. 97–19402 Filed 7–22–97; 8:45am]

Billing Code: 4830–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of alterations to three existing Privacy Act systems of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of the proposed alteration to Treasury/IRS 00.001—Correspondence Files and Correspondence Control Files; Treasury/IRS 00.002—Correspondence Files/Inquiries About Enforcement Activities; and Treasury/IRS 22.034—Individual Returns Files, Adjustments and Miscellaneous Documents Files, which are subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

EFFECTIVE DATE: July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Tiffany, Office of the Taxpayer Advocate, National Office, Internal Revenue Service, at (202) 622–6100.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service is making certain changes to Treasury/IRS 00.001—Correspondence Files and Correspondence Control Files; Treasury/IRS 00.002—Correspondence Files/Inquiries About Enforcement Activities. The alterations to each notice are to reflect the aggregating of data from local IRS Problem Resolution Offices to analyze IRS customer service for the purpose of improving IRS service to the public. The alterations also include minor changes to the systems such as adding/deleting locations, adding ''Purpose(s)'' statements to the system notices, changing the description of the storage, retrievability, and safeguard procedures found in the notices.

These changes will allow the IRS to better evaluate the effectiveness of its internal systems as well as the impact

of the tax law as it relates to problem resolution. The reports to be generated will be more detailed and will provide a holistic view of areas of tax administration that need improvement.

Treasury/IRS 00.001 and Treasury/IRS 00.002 cover individuals who have made a complaint or inquiry concerning a tax matter and who may have a tax liability. These systems are being altered to reflect a greater reliance on electronic storage, assignment, case tracking and management information, as well as the centralization of records. They are also being changed to add the addresses of nationwide area distribution centers that receive requests for IRS forms and publications and to add the address of the new Tennessee Computing Center. In addition, a ''Purpose(s)'' data element is being added to Treasury/IRS systems 00.001, and 00.002.

Alterations are also being made to Treasury/IRS 22.034—Individual Returns Files, Adjustments and Miscellaneous Documents Files. This system maintains records on taxpayers who have had changes made to their accounts, have had information posted to the Individual Master File or other tax accounting files because of filing a return, applications, or other documents, or as a result of actions initiated by the Service. The alteration being made to this system is to add new district office locations. A ''Purpose(s)'' data element is also being added to the system of records notice.

The alterations to the three existing systems of records are published below. The systems notices for Treasury/IRS 00.001, Treasury/IRS 00.002, and Treasury/IRS 22.034 were published in their entirety most recently in the **Federal Register** Vol. 60, pages 56777, 56778 and 56782, respectively, November 9, 1995.

Dated: July 10, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/IRS 00.001

SYSTEM NAME:

Correspondence Files and Correspondence Control Files

SYSTEM LOCATION:

Description of the change: Remove the current text and insert the following: ''Various offices of the Internal Revenue Service maintain files of correspondence received, including the Eastern Distribution Center, 4300 Carolina Avenue, Richmond, VA 23222; the Central Area Distribution Center, 2402 East Empire, Bloomington, IL 61799; the Western Area Distribution Center, 3041 Sunrise Boulevard, Rancho Cordova, CA 95742; and the Tennessee Computing Center, PO Box 30309, Airport Mail Facility, Stop 76, Memphis, TN 38130. (See IRS Appendix A for addresses of other offices).''

* * * * *

PURPOSE(S):

Often taxpayers choose to communicate with the IRS through correspondence. The ability to access the information when the need arises is paramount to our success as an agency. This system will allow the IRS to quickly access correspondence received from the taxpayers and their representatives and provide a chronological record of what has transpired concerning tax matters.

* * * * *

STORAGE:

Description of the change: Remove the ''/or'' after ''microfiche and.''

RETRIEVABILITY:

Description of the change: Remove the sentence ''No centralized index exists.''

SAFEGUARDS:

Description of the change: After ''IRM 2(1O)OO'' add the following: '', and the Manager's Security Handbook, IRM 1 (16)12.''

RETENTION AND DISPOSAL:

Description of the change: Delete ''IRM 1(15)59.1'' and add ''IRM 1(15)59.12.''

* * * * *

Treasury/IRS 00.002

SYSTEM NAME:

Correspondence Files/Inquiries About Enforcement Activities.

SYSTEM LOCATION:

Description of changes: After ''(See IRS appendix A for addresses).'' add: ''Other offices of the Internal Revenue Service maintain files of correspondence received, including the Eastern Distribution Center, 4300 Carolina Avenue, Richmond, VA 23222; the Central Area Distribution Center, 2402 East Empire, Bloomington, IL 61799; the Western Area Distribution Center, 3041 Sunrise Boulevard, Rancho Cordova, CA 95742; and the Tennessee Computing Center, PO Box 30309, Airport Mail Facility, Stop 76, Memphis, TN 38130.''

* * * * *

PURPOSE(S):

Often taxpayers choose to communicate with the IRS through correspondence. The ability to access the information when the need arises is paramount to our success as an agency. This system will allow the IRS to quickly access correspondence received from the taxpayers and their representatives and provide a chronological record of what has transpired concerning tax matters.

* * * * *

STORAGE:

Description of the change: Remove the ''/or'' after ''paper records.''

RETRIEVABILITY:

Description of the change: Remove the sentence ''No centralized index exists.''

SAFEGUARDS:

Description of the change: After ''IRM 2(1O)OO'' add the following: '', and the Manager's Security Handbook, IRM 1 (16)12.''

RETENTION AND DISPOSAL:

Description of the change: Delete ''IRM 1(15)59.1'' and add ''IRM 1(15)59.12.''

* * * * *

Treasury/IRS 22.034

SYSTEM NAME:

Individual Returns Files, Adjustments and Miscellaneous Documents Files.

SYSTEM LOCATION:

Description of the change: Remove the current text and insert the following: ''Internal Revenue Service Centers, District Offices and Federal Record Centers. (See IRS appendix A for addresses.)''

* * * * *

PURPOSE(S):

The purpose of this system is to provide background and supporting documentation for inputs affecting taxpayer account information. Additionally, overpayments retained and transferred against outstanding liabilities from the state in which it occurred will be recorded. This will aid taxpayers in reconciling their account balances with state agencies.

* * * * *

[FR Doc. 97–19403 Filed 7–22–97; 8:45 am]

BILLING CODE: 4830–01–F

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–18: OTS No. 3397]

Bridgeport Savings and Loan Association, Bridgeport, Ohio; Approval of Conversion Application

Notice is hereby given that on July 14, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bridgeport Savings and Loan Association, Bridgeport, Ohio, to covert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: July 17, 1997.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–19269 Filed 7–22–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–17; OTS No. 0336]

Workingmens Savings Bank, FSB, Pittsburgh, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on July 14, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegate authority, approved the application of Workingmens Savings Bank, FSB, Pittsburgh, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: July 17, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–19268 Filed 7–22–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Future of VA Long-term Care

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on the Future of VA Long-Term Care will be held on August 4–5, 1997, at the Department of Veterans Affairs, in Room 230, located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the Committee is to provide professional advice on the present scope and structure of VA's long-term care services, and about changes necessary to ensure that services are available and effective in a future healthcare setting. The Committee will begin at 8:30 a.m. (EDT) until 5:00 p.m. (EDT) on August 4 and will begin at 8:30 a.m. (EDT) until 12:00 noon (EDT) on August 5.

The agenda will begin with a review of the summary of the previous meeting's minutes. The focus for the remainder of the meeting will be Nursing Home Care (cost study, size and direction, program size/mix); Role of Hospital Based Nursing Home Care, Long-Term Care Data Systems, and Approaches to Case Management.

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Healthcare Group at 202–273–8539 prior to the meeting.

Dated: July 16, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–19275 Filed 7–22–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
July 23, 1997

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 98 and 99

Child Care and Development Fund Block Grant Regulations Amendments; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 98 and 99

RIN 0970–AB74

Child Care and Development Fund

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the Child Care and Development Block Grant (CCDBG) regulations at 45 CFR Part 98. In large part, the proposed amendments respond to the amendments made to the CCDBG Act and the Social Security Act by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193). This proposed rule additionally includes certain selected amendments and preamble clarifications originally proposed for the CCDBG regulations on May 11, 1994 (59 FR 24510–24527) but never issued as a final rule due to the welfare reform initiative that resulted in PRWORA.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than September 22, 1997.

ADDRESSES: An electronic version of this proposed rule can be found at http://www.acf.dhhs.gov/programs/ccb/policy/nprm.htm for your review. Comments on the regulation can be submitted electronically following the directions at the site, and will be posted according to those directions. Comments received from State Lead Agencies for child care will also be posted on the web site as a service to the public, regardless of the method of submission. Printed copies of the electronic comments will be added to the file of written comments and be available for public review during the hours described below.

Comments may also be mailed (facsimile transmissions will not be accepted) to the Assistant Secretary for Children and Families, Attention: Child Care Bureau, Hubert Humphrey Building, Room 320F, 200 Independence Avenue, SW, Washington, DC 20201 or delivered to that address between 8 a.m. and 4:30 p.m on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Barbara Binker, Director, Policy Division, Child Care Bureau, Hubert Humphrey Building, Room 320F, 200 Independence Avenue, SW, Washington, DC 20201, telephone (202) 401–5145. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the child care programs authorized under title IV–A of the Social Security Act—AFDC Child Care, Transitional Child Care and At-Risk Child Care. In addition, PRWORA amended section 418 of the Social Security Act to provide new Federal child care funds and transfer them to the Lead Agency under the amended Child Care and Development Block Grant Act. The funding under section 418 is now subject to the CCDBG Act. PRWORA also amended the CCDBG Act.

PRWORA also reformed the Federal welfare program, replacing the Aid to Families with Dependent Children (AFDC) program with the Temporary Assistance for Needy Families (TANF) program. Under TANF, States have great flexibility to design programs that promote work, responsibility and self-sufficiency, and strengthen families.

In preparing to draft this proposed rule, ACF consulted extensively with grantees and with organizations interested in child care. In these early, pre-drafting consultations we met with representatives of State-level organizations, such as the National Governors' Association and the American Public Welfare Association. We also met with representatives of national organizations of local governments such as the National Association of Counties, and with national organizations such as the Children's Defense Fund and the National Association of Child Care Resource and Referral Agencies. We held a national teleconference with State child care administrators, and held extensive discussions regarding the new statute at ACF's national child care conference held in September 1996. We consulted with two on-going Child Care Bureau work groups composed of State and tribal child care administrators, held 10 regional conference calls with our tribal grantees, and conducted two workshops on tribal child care issues at ACF's Tribal Welfare Reform Conference, held in Seattle, Washington, in October 1996. We also received a number of letters touching on possible regulatory approaches to implementing the child care provisions of PRWORA.

The PRWORA provides several child care funds to support low-income families, transfers these funds to the CCDBG Lead Agency, and amended the CCDBG Act to ensure the consistent quality of child care services provided with these Federal funds. Therefore, consistent with the intent of the statute, we have named the combined funds the Child Care and Development Fund (CCDF). In this proposed rule, references to the CCDBG have been revised to refer to the CCDF.

Goals and Purpose of the Proposed Rule

In developing this proposed rule, our primary goals were to:

—amend the CCDBG regulations in light of the child care amendments under title VI of PRWORA,
—achieve a balance between program flexibility and accountability,
—assure the health and safety of children in child care,
—recognize that child care is a key support for work, as envisioned in TANF, and
—clarify, streamline, simplify, and unify the Federal child care program.

Our specific efforts toward achieving these primary goals include: assuring that States have adequate information upon which to base their child care payments; promoting public involvement in the Plan process; strengthening health and safety in child care by requiring children receiving CCDF subsidies to be age-appropriately immunized; requiring coordination between child care Lead Agencies and agencies administering TANF, health, education and employment programs; streamlining the CCDF application and Plan; and providing clarifications based on experience operating both the CCDBG program and the now-repealed title IV–A programs.

We believe that our proposed regulatory changes respond to the statutory changes and also represent a balancing of viewpoints in cases where there were multiple views on a single issue. For example, in our consultations we asked for information on how the statutory amendments around payment rates and the concept of ''equal access'' should be implemented. In the responses we received, there was a central tension between the desire for complete flexibility by States to establish child care subsidy payment

rates and the need to assure that the established rates promoted both work and parental choice. To achieve balance on the issue, we propose to give Lead Agencies the flexibility to set payments, but to require that the rates be based on a market survey conducted no earlier than two years prior to the effective date of the currently approved CCDF Plan. Using this approach, we assure that Lead Agencies have an appropriate frame of reference for establishing payments that meet the needs of work and family.

Another issue on which we heard opposing views was the amended public hearing requirements concerning the CCDF Plan. States and their organizations desired complete flexibility, i.e., no further regulation beyond the requirements that the hearing be announced with sufficient time and statewide notice. Others with whom we consulted wanted regulations that specified both the timing and the manner of the notice, as well as details on the locations of the hearing. Our proposed rule contains basic requirements on the timing of the notice and the hearing, but we provided flexibility regarding the number, location(s), and other details of the hearings. Here we believe we have established a balance between the flexibility of Lead Agencies to take into account such considerations as variations in geography and the calendars of State legislatures, and the statute's strengthening of the basic accountability of Lead Agencies to the public during the child care planning process.

We continue to believe in the need for immunization of children in child care as an essential part of health and safety. Immunization is a critical part of what we consider to be a natural connection between child care and healthy children, and we again propose, as we did in 1994, that children in subsidized care be age-appropriately immunized. Since there is a natural connection between child care and healthy children, we also are proposing a specific requirement that Lead Agencies for child care coordinate with public health agencies, including those responsible for immunization.

We also propose specifically to require coordination between child care Lead Agencies and other entities that we believe are crucial to supporting a strong child care program. Since the relationship between the CCDF and the TANF program is especially important, we would be requiring coordination between the CCDF agency and the TANF agency. We also propose to require that child care consumer information provided by the CCDF Lead Agency include information regarding the TANF agency's implementation of the TANF exception to sanctioning a single custodial parent with a child under age six who refuses to work due to lack of appropriate, accessible, or affordable child care.

In addition to our proposed requirements regarding coordination with TANF, our proposed rules include specific requirements relating to coordination between CCDF Lead Agencies and public education, employment, and public health agencies, including those agencies responsible for immunizations. There are numerous opportunities for linkages between child care and these agencies. We believe that the connections between child care programs and these agencies are pivotal in promoting family self-sufficiency and general well-being. It is important, for example, that such coordination support the linkage of families to a system of continuous, accessible health care.

Our goals in developing these proposed amendments included clarification, simplification, and streamlining to support the strong, unified child care system that PRWORA provides. Further, since the changes under PRWORA necessitated Plan revisions, we chose to use this as an additional opportunity to reorganize and simplify the application and CCDF Plan document, and to create a separate Plan document specifically for Tribes. We have aimed for clarity in this regulation on a number of points. In the regulations at subparts F, Use of Child Care and Development Funds, and G, Financial Management, we clarified new statutory provisions regarding such areas as administrative costs, quality, matching (including the use of pre-kindergarten funds as match), maintenance-of-effort, and reallotment.

Finally, we are again proposing certain changes and clarifications that were contained in an earlier proposed rule (59 FR 24510–24527, May 11, 1994). The 1994 proposed rule was published in response to requests from States, child care providers, and organizations for certain amendments to promote the health and safety of children receiving subsidized care and to enable the improved coordination between the now repealed title IV–A child care programs and the Child Care and Development Block Grant. The enactment of the child care provisions of PRWORA provided even greater opportunities for unifying the Federal child care programs and made many of those proposed child care amendments unnecessary. However, we are carrying over into this proposed rule the changes to the CCDBG health and safety standards included in the earlier proposed rule, and we also include the clarification contained in the preamble to the 1994 proposed rule regarding the availability of child care certificates. We have again offered the clarification contained in the 1994 proposed rule regarding inclusion of foster care in the definition of protective services and have added clarifications regarding respite care and parental choice in protective services cases, which we felt were necessary based on our experience with the CCDBG program. Also, as we did in 1994, we propose to give Lead Agencies additional flexibility in offering in-home child care.

The rules and clarifications that we proposed in 1994 and repeated in this proposed rule received public support at the time they were originally proposed. In view of this support, the changes had been planned for publication as final rule. However, our plans for publication were overtaken by the welfare reform legislative agenda that culminated in the passage of PRWORA. Since over two years have passed from the date of these original proposals, however, ACF is again soliciting comments on the amendments and clarifications that we carried over from our 1994 proposed rule.

Statutory Authority

Section 658E of the Child Care and Development Block Grant Act of 1990 requires that the Secretary shall by rule establish the information needed in the Block Grant Plan.

Regulatory Impact Analysis

This proposed rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken is the most cost-effective and least burdensome while still achieving the regulatory objectives.

For the most part, the proposed regulations are required by PRWORA and represent changes to the existing regulations or deletions from the existing regulations.

As in 1994, we are again proposing a requirement that children be immunized in order to receive services under the Child Care and Development

Fund and clarifying that such immunizations be age-appropriate. The CCDBG health and safety regulations currently require grantees to include provisions about immunizations in their CCDBG Plans and to provide assurances that requirements with respect to immunizations are in place. In addition, most States already include immunizations in their child care standards.

We do not anticipate that our proposal will have a significant negative impact on either grantees or families, since grantees will not be required to provide immunizations directly. The Vaccines for Children Program, an important component of the Childhood Immunization Initiative (CII), provides immunizations to eligible children, including those without insurance coverage, those eligible for Medicaid, and American Indians and Alaskan Natives. In addition, every State receives grant funds for immunization activities, including hiring nurses, expanding clinic hours, assessing coverage levels, and conducting outreach. Immunization levels of children 19–35 months of age are measured by the National Immunization Survey, the first ever survey conducted throughout the U.S. that provides comparable State vaccination coverage estimates.

The immunization provision was considered the most cost-effective and least burdensome approach because: (1) it helps ensure that vulnerable young children are age-appropriately immunized; (2) immunization of such children is highly cost-effective; and (3) it provides flexibility to grantees in determining how to implement the provision.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. The primary impact of these proposed rules is on State, tribal and territorial governments. To a lesser extent the regulation could affect individuals and small businesses. However, the number of small businesses affected should be limited, and the expected economic impact on these businesses would not be so significant that a full regulatory flexibility analysis is indicated.

- First, the regulations retain many provisions designed to ensure broad participation by small businesses in the program. The regulations still require that parents have a choice among a variety of providers including family day care providers. These and other provisions in the current rules will help ensure that States exercise restraint in imposing any additional requirements on small entities providing child care.
- The proposed rule contains a number of provisions that could result in some decrease in the regulatory and economic burdens on providers that are small businesses. Most importantly, because States will be required to operate their programs under a more consistent set of program rules, participating providers will face a simpler and more streamlined set of Federal regulatory requirements.
- The providers who would potentially be most affected by this rule are in-home providers. These providers are generally not operating as small businesses, but as domestic employees; thus, any impact on them need not be specifically addressed under this Act.
- The regulation could ultimately result in some additional State or tribal regulatory requirements or health and safety standards for other providers, such as family day care providers that are small businesses. However, the impacts on small businesses, if any, would not be directly attributable to this regulation. With the possible exception of the immunization provision, the regulation does not direct any expansion of Federal, State or tribal regulatory requirements or health and safety standards for providers; thus, any impacts on providers should arise only as the result of independent State and/or local decisions to impose additional requirements.

State, local and tribal governments already have authority to set general regulatory requirements and health and safety standards for child care providers. If States (or other grantees) believe that there was a substantial need for additional requirements (to protect the well-being of children in care), we would have expected them to act under this general authority.

While States generally have immunization requirements for children in child care, the proposed immunization provision might result in some additional children being subject to immunization requirements or stronger requirements for some children. However, States have flexibility in deciding how immunization requirements are to be implemented. Our proposal does not dictate that States impose requirements on providers; rather, States can choose to impose them on eligible families. Thus, the immunization provision in this proposed rule does not necessarily affect small businesses. Further, where States do choose to impose additional requirements on providers related to the immunization provision, such requirements would be basically administrative in nature (e.g., documentation); we expect the costs of immunization to be covered through other funding sources. Thus, this provision would not have a significant economic impact on providers.

Thus, the number of entities affected, and the net economic impact on them, should not be significant.

Paperwork Reduction Act

Sections 98.16 and 98.81 contain the Lead Agency Plan information requirements of the ACF–118 and ACF–118–A respectively. Sections 98.70 and 98.71 contain the information required by both the ACF–800 and ACF–801 child care data collections. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Title: State/Territorial Plan Pre-Print (ACF–118) and Tribal Plan Pre-print (ACF–118–A) for the Child Care and Development Fund (Child Care and Development Block Grant).

Description: These legislatively-mandated plans serve as the agreement between the Lead Agency and the Federal Government as to how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information will be used for Federal oversight of the Child Care and Development Fund.

Respondents: State governments and territories, Tribal organizations

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	30	840
ACF–118	240	.5	30	3,600
Estimated Total Annual Burden Hours				4,440

Title: Child Care Biannual Aggregate Report—ACF–800.

Description: This legislatively mandated report collects program and participant data on all children and families receiving direct CCDF services. Aggregate data will be collected and will be used to determine the scope, type, and methods of child care delivery, and to provide a report to Congress.

Respondents: State governments, Guam, Virgin Islands, Puerto Rico and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	54	2	40	4,320
Estimated Total Annual Burden Hours				4,320

Title: Child Care Quarterly Unit Report, ACF–801

Description: This legislatively-mandated report collects program and participant data on children and families receiving direct CCDF services. Disaggregate data will be collected and will be used to determine the participant and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress. Form ACF 801 represents the data elements to be collected and reported to ACF.

Respondents will be asked to sample the population of families receiving benefits on a monthly basis and submit the three most current monthly samples to ACF quarterly. Each monthly sample is drawn independent of the other samples and retained for submission within a quarterly report. ACF is not issuing specifications on how respondents compile overall database(s) from which samples are drawn. ACF will provide to the respondents a sampling plan which will specify minimum sample size. It is expected to be a monthly sample of approximately 150 cases for large States with smaller samples based on population size adjustments for smaller respondents.

Respondents: States, D.C., Guam, Virgin Islands and Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	54	4	20	4,320
Estimated Total Annual Burden Hours:				4,320

The Administration for Children and Families will consider comments by the public on these proposed collections of information in:

—Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

—Evaluating the accuracy of the ACF's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

—Enhancing the quality, usefulness, and clarity of the information to be collected; and

—Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of response.

OMB is required to make a decision concerning the collections of information in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, *Attn:* Laura Oliven.

Proposed Amended Regulations, 45 CFR Part 98

We have chosen to present the proposed amendments by publishing a proposal to completely revise 45 CFR Part 98. We believe that the publication of the whole text of Part 98 will facilitate understanding of the impact of the amendments on the regulations that are retained. The preamble discussion

in this proposed rule primarily discusses the changed regulations. It also contains certain clarifications based on ACF's experience in implementing the prior final rule. Where regulations are retained, the preamble explanation and interpretation of those regulations published with the prior final rule (57 FR 34352–413, August 4, 1992) is also retained unless specifically modified in the preamble to this proposed rule. The following table describes in detail the substantive changes to the amended sections. In addition, we made a number of other minor editorial changes throughout the regulations to enhance clarity, to reflect the change of program name from the Child Care and Development Block Grant (CCDBG) to the Child Care and Development Fund (CCDF), and to reflect the change from ''Grantee'' to ''Lead Agency'' for reasons explained in this preamble at § 98.2.

We have made the following changes to the regulations.

Title/heading: Part 98; Subparts—A, E and F; Sections—98.1, 98.13, 98.15, 98.43, 98.45, 98.51, 98.52, 98.53, 98.61, 98.62, 98.63, 98.64, 98.65, 98.70, 98.71, and 98.81.

Definitions: § 98.2 is now an alphabetical listing.

Removed: (e), (f), (n), (o), (s), (gg), (nn) and (oo).

Added: Child Care and Development Fund (CCDF), Construction, Discretionary Fund, Facility, Major Renovation, Mandatory Funds, Matching Funds, Modular unit, Real property, and Tribal Mandatory Funds.

Assurances and Certifications: § 98.15 has been reorganized to reflect the statute intent that states ''assure'' they meet certain requirements and ''certify'' that they meet others.

Tribes: We have consolidated tribal regulations from §§ 98.16(b), 98.17(b) and 98.60(g) into Subpart I.

The following distribution table summarizes what has been added, removed, revised and redesignated in 45 CFR Part 98.

Existing section	Action	New section
	Added	98.1(a)
98.1 (a) and (b)	Redesignated	98.1 (b) and (c)
98.1(b)(7)	Removed	
98.1(b)(8)	Redesignated	98.1(c)(7)
98.2(a), (j), (q), (mm)	Revised	98.2—Alphabetical
98.10 (b) and (e)	Revised	98.10 (b) and (e)
98.11(a) and (b)(8)	Revised	98.11 (a) and (b)(8)
98.12 (a) and (c)	Revised	98.12 (a) and (c)
	Added	98.12 Introductory text
98.13(a)	Revised	98.13 (a) and (b)
98.13 (b) and (c)	Removed	
98.13(a)(10)	Redesignated	98.13(c)
98.13(a)(11)	Redesignated	98.13(d)
98.14 (a)–(c)	Revised	98.14(a)–(c)
98.15	See note above	
98.16(a)	Redesignated	98.16 Introductory text
98.16(a) (1)–(12)	Revised	98.16 (a)–(l)
98.16(a) (13)–(16)	Removed	
	Added	98.16 (m)–(q)
98.16(a)(17)	Redesignated	98.16(r)
98.17(a)	Revised	98.17(a)
98.17(c)	Redesignated	98.17(b)
98.20(a)	Revised	98.20(a)
98.21	Removed	
	Added	98.30(c)(3)
98.30(c) (3)–(5)	Redesignated	98.30(c) (4)–(6)
98.30(d)	Removed	
98.30 (e)–(g)	Redesignated	98.30 (d)–(f)
98.31	Revised	98.31
	Added	98.32(c)
98.33	Revised	98.33
98.40(a)	Revised	98.40(a)
98.41(a)(1)	Revised	98.41(a)(1)
98.41 (c) and (d)	Removed	
98.41 (e)–(g)	Redesignated	98.41 (c)–(e)
98.42(d)	Removed	
98.43 (a) and (b)	Revised	98.43 (a) and (b)
	Added	98.43(c)
98.43 (c) and (d)	Redesignated	98.43 (d) and (e)
98.43 (e) and (f)	Removed	
98.45	Revised	98.45
98.50 (a) and (c)	Revised	98.50 (a) and (c)
98.50(d)	Removed	
	Added	98.50 (d)–(f)
98.51 (a) and (b)	Revised	98.51(a)
98.51 (c)–(f)	Removed	
98.51(g)	Redesignated	98.51(b)
	Added	98.51(c)
98.52 (a) and (b)	Revised	98.52(a)
98.52(c)	Revised	98.52(c)
98.53	Revised	98.53
98.54(a)	Revised	98.54(a)
	Added	98.54(b)(3)

Existing section	Action	New section
98.60 (a), (d) and (f)	Revised	98.60 (a), (c) and (e)
98.60(b)	Removed	
98.60 (c)–(f)	Redesignated	98.60 (b)–(e)
98.60 (h)–(j)	Redesignated	98.60 (g)–(i)
98.61 (a) and (b)	Revised	98.61(a)
98.62(a)–(c)	Redesignated	98.61 (b)–(d)
	Added	98.61(e)
	Added	98.62 (a) and (b)
98.63 (a) and (b)	Redesignated	98.64(b)
	Added	98.63 (a)–(c)
98.64 (a)–(d)	Removed	
	Added	98.64 (a), (c) and (d)
	Added	98.65 (f) and (g)
98.67(c)	Revised	98.67(c)
98.70	Revised	98.70
98.71	Revised	98.71
98.80 Introductory text	Revised	98.80 Introductory text
98.80 (b) and (f)	Revised	98.80 (b) and (f)
98.81(a)	Revised	98.81(a)
	Added	98.81(b)
98.81(b)	Redesignated	98.81(c)
98.82 Introductory text	Revised	98.82 Introductory text
98.83 (c)–(f)	Revised	98.83 (c)–(f)
98.83 (g) and (h)	Removed	
98.83(i)	Redesignated	98.83(g)
	Added	98.84
98.90(e)	Revised	98.90(e)
98.92(a)	Revised	98.92(a)
98.92(b)	Removed	
98.92(c)	Revised	98.92(b)
98.92 (d) and (e)	Redesignated	98.92 (c) and (d)
	Added	98.92(e)

Subpart A—Goals, Purposes and Definitions

Goals and Purposes (Section 98.1)

This section of the regulations has been modified to incorporate the goals for the Child Care and Development Fund (CCDF) contained in section 658A of the amended CCDBG Act. We incorporated the goals as § 98.1(a), and we retained but moved the subparagraphs on the purpose of the CCDF program and the regulations to § 98.1 (b) and (c), respectively.

In subparagraph (c), we eliminated the items relating to non-supplantation and administrative costs. The PRWORA amendments eliminated the non-supplantation requirement and, for the first time, placed statutory limits on administrative costs. The new regulations relating to the statutory limits on administrative costs are proposed at § 98.52.

Definitions (Section 98.2)

The amendments proposed for this section are related to changes necessitated by the new statute, including additions and deletions. We have made the following changes: updated the definition of the Child Care and Development Block Grant Act to reflect it as amended; amended the definition of a child care certificate to reflect the new statutory language allowing the use of a certificate as a required deposit for child care services; and amended the definition of relative child care provider to reflect the statutory addition of great grandparents and siblings (if living in a separate residence) as relative providers.

Since the new statute created a multi-part child care fund subject to the provisions of the Act, we have substituted the term ''Child Care and Development Fund (CCDF)'' for ''Block Grant.'' Use of the term ''CCDF'' reflects the multiple sources of monies with a shared purpose. We have also defined the constituent parts of the CCDF: Mandatory Funds, Matching Funds, Discretionary Funds, and Tribal Mandatory Funds.

The new section 658O(c)(6) of the Act provides for Tribes to use CCDF funds for construction and renovation of child care facilities, with the Secretary's approval. Therefore, we have proposed definition of several new terms related to this provision: construction, facility, major renovation, modular unit, and real property. ACF especially seeks comments on this proposed terminology, which is a first step towards developing program instructions on tribal applications for use of CCDF funds for construction and renovation.

The amended Act deleted the terms ''elementary school'' and ''secondary school'' formerly found at sections 658P(3) and (10). Therefore, we have also deleted these terms from our regulatory definitions. In so doing, we want to emphasize that child care services to school-aged children are still allowable under the CCDF, and we strongly encourage Lead Agencies to continue providing such services. Although the definitions of these terms have been removed as unnecessary, the Lead Agency has the flexibility to retain these very necessary services.

We have replaced separate terms for ''Grantee'' and ''Lead Agency'' with the single term ''Lead Agency.'' We did this for a number of reasons. First, there was not a meaningful difference between those terms. Second, we wished to remove any ambiguity that could result from the use of two different terms. Third, we wanted to emphasize the streamlined administration of all child care programs in a State that resulted from PRWORA. We believe that use of the term ''Lead Agency'' conveyed that sense of unified and expanded responsibility better than the term ''Grantee.'' Lastly, we wanted to avoid any confusion that could arise when the State uses subgrantees in implementing the CCDF. We have replaced the specific term ''Grantee,'' as formerly defined,

with ''Lead Agency'' throughout these regulations, although there remain some instances where the word ''grantee'' appears in its common usage.

Finally, we have eliminated the numbering to conform with **Federal Register** style which requires only alphabetical order for definitions. This will simplify any future additions or deletions to this section.

Subpart B—General Application Procedures

Lead Agency Responsibilities (Section 98.10)

The new statute did not change the responsibilities of the Lead Agency. The amended statute at section 658D(b)(1)(A), however, expands the CCDF Lead Agency's ability to administer the CCDF program through other agencies. This change broadens the ability of the Lead Agency to administer the CCDF program through governmental or non-governmental entities, not just ''other State agencies'' as provided in the original CCDBG Act. These entities could include local governmental agencies and private organizations. The new statute and the Conference Agreement report (H.R. Rep. No. 725, 104th Cong., 2d Sess. (1996)) are silent regarding whether the non-governmental agencies cited in this statutory change must be non-profit organizations, so ACF has not regulated on the characteristics of the agencies through which the Lead Agency may administer the program.

Administration Under Contracts and Agreements (Section 98.11)

Under the latest statutory amendments, the Lead Agency remains the single point of contact and retains overall responsibility for the administration of the CCDF program. We have amended this section, however, to reflect the statutory change discussed at § 98.10 regarding the Lead Agency's additional flexibility to administer the program through other governmental or non-governmental agencies.

Further, since we made revisions corresponding to the added administrative flexibility granted to the Lead Agency, we also wanted to align the wording of this section more closely with the statute concerning the overall, lead responsibility of the Lead Agency. Thus, we have re-worded the paragraphs in this section that suggested that the Lead Agency ''shares'' administration of the program with other entities, because the relationship between the Lead Agency and other entities through which it administers the CCDF is not co-equal.

Coordination and Consultation (Section 98.12)

Section 658D(b)(1)(D) of the Act requires the Lead Agency to coordinate the provision of CCDF child care services with other Federal, State, and local child care and early childhood development programs. Coordination is crucial to the successful implementation of child care programs and quality improvement activities. Therefore, we propose at § 98.12(a) to require the Lead Agency to coordinate its child care services with the specific entities required at § 98.14(a) to be involved in the CCDF Plan development process: Temporary Assistance for Needy Families (TANF), public health, employment services, and public education.

The statutory changes under PRWORA significantly heighten the need for enhanced coordination between TANF and child care. The new temporary assistance program, TANF, imposes increased work requirements both regarding the number of TANF families participating in work and the number of hours they must work. At the same time, the guarantee of child care for families who are in work or approved education and training and the guarantee of Transitional Child Care program assistance were eliminated when PRWORA repealed the title IV–A child care programs.

Moreover, the new statute provides new child care funding and gives the CCDF Lead Agency administrative oversight over the new funds in addition to the funds authorized under the amended Child Care and Development Block Grant Act. The law requires that States dedicate 70 percent of these new funds to the child care needs of families who are receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition from such assistance, and families who are at risk of becoming eligible for such assistance. Under the new law, Tribes also receive additional child care funding and have the option to operate TANF programs. Tribes that operated tribal programs under the now-repealed Job Opportunities and Basic Skills Training (JOBS) program, may continue to operate work programs. Considered together, these changes present both an opportunity and a challenge for Lead Agencies to serve the child care needs of TANF families.

It is extremely important that children and their families be linked to a system of continuous and accessible health care services, and there are numerous opportunities for linkages between health and child care programs. Overall coordination between child care programs and agencies responsible for children's health is key to supporting the healthy development of children. An ongoing Departmental initiative encourages the linkage between child care and health care. In May 1995, Secretary Shalala initiated the Healthy Child Care America Campaign, which encourages States and localities to forge linkages between the health and child care communities. Recognizing their mutually beneficial roles, we propose to require that the Lead Agency, as part of its health and safety provisions, assure that children in subsidized care be age-appropriately immunized. We believe that children will benefit substantially from this enhanced linkage we are making between child care and health services.

Employment is the goal of most TANF families and employment services are critical to the low-income working families served by the CCDF. Therefore, we believe that it is only prudent that the Lead Agency coordinate with those State agencies that are responsible for providing employment and employment-related services. But child care is also emerging as an important workforce development issue for the entire population. As such, we believe that Lead Agencies should also undertake policies that support and encourage public-private partnerships that promote high quality child care.

Linkages with education agencies are crucial for leveraging additional services and enhancing child development. One important aspect of this linkage is the role played by public schools as a critical on-site resource for child care. Although PRWORA repealed section 658H of the Child Care and Development Block Grant Act, which directly addressed before- and after-school child care, in the fiscal year 1997 budget Congress nevertheless set aside $19 million specifically to use for before- and after-school child care activities and child care resource and referral. We, therefore, believe that the repeal of section 658H should not result in a lessening of coordination with before- and after-school programs. We have included requirements to coordinate with public education agencies, both for the purpose of child care planning and development, as well as for more general coordination initiatives.

Aside from proposing to require Lead Agency coordination with specific entities discussed above, we also

strongly encourage coordination with other agencies with potential impact on child care, including: Head Start collaborative offices, child support, child protective services (especially when the Lead Agency chooses to include children receiving protective services among the families eligible for CCDF subsidies), transportation, National Service, and housing.

The Head Start comprehensive model of health, parent involvement, family support and education, when linked with child care, can provide parents and children with quality comprehensive full day/full year services. Promising models that fund Head Start-eligible children in community-based child care provided in child care centers and homes are emerging across the country, and we encourage Lead Agencies to explore and support such efforts.

Partnerships with National Service programs present promising opportunities for collaborations that can expand and enhance child care for both young children and school-aged children. National Service programs have developed several effective and replicable models for providing the tools and skills necessary to build the capacity and sustainability of local child care programs, involving parents and community volunteers in child care activities, and enlisting private sector participation in meeting community needs, including child care.

The availability of transportation is key to enabling families to access child care services and, ultimately, work. Coordination with transportation agencies and planning groups can ensure that child care facilities are located near major transportation modes for easier access and that systems of public transportation support travel patterns of low-income workers. Alleviating transportation difficulties for child care cuts down on travel time and stress, and allows parents to focus on achieving self-sufficiency through work and education.

Child care and child support enforcement programs serve many of the same families and have a shared mission—to promote self-sufficiency of families and the well-being of children. As a result, we encourage collaborative outreach initiatives between these programs. For example, child care programs can disseminate information to parents about paternity establishment and child support enforcement. We also encourage the two programs to coordinate on policy issues. For example, the programs have a common interest in assuring that the State guidelines used to calculate child support awards adequately consider the cost of child care.

Coordinating with housing agencies is crucial for the millions of TANF recipients and low-income workers who receive child care subsidies and reside in public housing. Locating child care facilities in or near public housing makes services more accessible, and can provide parents with a more stable and familiar environment for their children's care. Lead Agencies can work with public housing authorities to identify opportunities where co-located housing and child care can serve as an employment or entrepreneurial strategy, and a support service for residents.

We also wish to highlight that the regulation at § 98.12(c), which requires States to coordinate, to the maximum extent feasible, with any Indian Tribes that receive CCDF funds has new meaning in the context of the changes made by PRWORA. As we have noted above, Tribes are eligible to directly receive additional child care funding, and to operate TANF as well as continue to operate work programs if they operated a JOBS program. Nonetheless, the new law did not amend section 6580(c)(5), which specifically provides tribal children with dual eligibility for both tribal and State child care programs funded under CCDF. A broad range of options for implementing and designing programs is available to both States and Tribes. States and Tribes, therefore, have a mutual responsibility to undertake meaningful coordination in designing child care services for Indian families.

Applying for Funds (Section 98.13)

We are proposing to simplify the application process in order to reduce the administrative burdens of duplicative information requests and to provide budget information in the CCDF Plan, which is a public document. The current regulations require an annual ''application,'' separate from the Plan. This separate application must indicate the amount of funds requested, broken down by proposed use (e.g., direct services, administration, quality activities, etc.). A Plan that describes the entire child care program in detail is also required, but only once every two years. The Plan currently does not provide a ''fiscal context'' for the program, since it does not include budgetary information.

In the past, the separate application requested extensive budget information, largely due to the requirements related to the now-discontinued 25 percent setaside of funds for quality and supply building. Because we knew that the budget data was preliminary, we had not required its inclusion in the Plan or made it subject to the compliance process. More importantly, the budget information was not subject to the public hearing process.

We believe that the Lead Agency, in setting the goals and objectives of the program and in determining how to achieve them, must consider the allocation of funds, as well as the program and administrative activities that will be undertaken. We also believe that public knowledge of how funds might be allocated among activities and eligible populations is critical to the planning process. Therefore, we are requiring the Lead Agency to include in its Plan an estimate of the percent or amount of funds that it will allocate to direct services, quality activities, and administration. These estimates are for the public's consideration in the hearing process; they will not be used to award funds. The ACF 696, when approved by OMB, will be the formal vehicle for providing estimates to ACF for the purpose of awarding funds.

These Plan estimates will be macro-level estimates. That is, the Plan will reflect an estimated amount (or percentage) of funds that the Lead Agency proposes to use for: all direct services, for all quality activities and for administration. We will not ask that these estimates be broken down into subcategories as we had in the separate application. We wish to reiterate that we recognize that these are estimates and, as such, will not be subject to compliance actions. Nor will approval of a Plan be withheld based on the Lead Agency's allocation of funds among activities, unless the Plan indicates that the requirements for administrative cost or quality expenditures will be violated.

It is because of our strong belief in full public participation in the planning process for CCDF-funded child care services that we make this requirement. We remind Lead Agencies that, pursuant to section 658K of the Act, they must provide information on the actual use and distribution of funds at the end of the program period to ACF.

At § 98.13(a) we have retained the requirement that the Lead Agency apply for funds. We intend to use the financial form ACF–696 to fulfill this requirement, so that the need for a separate application is obviated.

We continue to request the various certifications and assurances that are required by other statutes or regulations and that apply to all applicants for Federal financial assistance, specifically:

- Pursuant to 45 CFR part 93, Standard Form LLL (SF–LLL), which assures that the funds will not be used

for lobbying purposes. (Tribal applicants are not required to submit this form.)

- Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the grantee provides a drug-free workplace.
- Pursuant to 45 CFR 76.500, certification that no principals have been debarred.
- Assurances that the grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended).

We have retained but sightly modified the requirement at § 98.13 to provide that the Lead Agency, not the Chief Executive Officer, must supply the requested information. While the Chief Executive Officer designates the Lead Agency, we feel that it is unnecessary for the Chief Executive Officer to thereafter apply for funding each year. This proposed change gives grantees the flexibility to simplify the application process further.

In summary, the proposed CCDF application process for States and Territories consists of the two-year CCDF Plan as required in § 98.17 and such other information as may be specified by the Secretary. For the second year of the Plan, the Lead Agency will use financial reporting forms to provide ACF with its estimates of funds needed quarterly—there is no longer a separate ''application'' needed from States and Territories in the second year of the Plan period. Accordingly, we have changed the title of this section from ''Application Content and Procedures'' to ''Applying for Funds.''

The requirements for Tribes have been moved to Subpart I and are discussed there. We have separated the tribal requirements in order that the discussion of tribal requirements may be more focused and coherent.

Plan Process (Section 98.14)

Section 658D(b) of the Act requires the Lead Agency in developing the Plan to: (1) coordinate the provision of services with Federal, State and local child care and early childhood development programs; (2) consult with appropriate representatives of local governments; and (3) hold at least one hearing in the State with sufficient time and statewide notification to provide an opportunity for the public to comment on the provision of child care services.

In amending the CCDBG Act to require that the Lead Agency provide ''sufficient time and Statewide distribution'' of the notice of hearing, Congress established a higher standard for public comment than previously existed in the Act. Affording the public a meaningful opportunity to comment on the provision of child care services advances public participation, Lead Agency accountability and the overall goals of welfare reform. Accordingly, we have established a minimum 20-day notice-of-hearing requirement at § 98.14(c). That is, the Lead Agency must allow a minimum of 20 days from the date of the statewide distribution of the notice of the hearing before holding the hearing. Many Lead Agencies have ongoing planning processes with broad community involvement that convene regularly during the year. We applaud such broad participatory approaches as they are especially responsive to changing needs and these approaches may fulfil the requirements of § 98.16.

In the interest of State flexibility, we have established only a minimum amount of time that the public should be notified of the hearing. However, we encourage Lead Agencies to consider providing longer lead times that would allow the public more time to prepare for hearings, especially when only a single hearing is held in the State. Although the Act requires the Lead Agency to hold only one public hearing, the Lead Agency may, of course, hold additional public hearings.

We considered establishing regulations around the newly added statutory language that requires ''statewide distribution of the notice of hearing.'' Clearly, the expanded Child Care and Development Fund potentially impacts a much wider segment of the population than may have been the case under the CCDBG. In light of the stronger statutory language about public hearings, we considered, for example, a regulation to require the Lead Agency to employ specific media in publicizing its hearing or to ensure that specific portions of the population be potentially exposed to the hearing notice.

We rejected these and other alternatives as restricting State flexibility. Nevertheless, we remain concerned that some Lead Agencies may not respond to the heightened statutory requirement. We, therefore, expect the Lead Agency to describe how it achieved statewide distribution of the notice of hearing in its description of the hearing process required in the Plan by § 98.16(e). Although we decline to propose a prescriptive rule in this matter at this time, we specifically reserve the authority to regulate further if Lead Agency Plans or actions indicate a less than ''statewide distribution of the notice of hearing'' as exemplified above.

Similarly, we have not established a specific requirement concerning written comments from the public. We believe, however, that a meaningful public comment process must consider written comments from persons or organizations, especially those who are unable to attend a hearing.

At § 98.14(c)(2) we have proposed that the hearing be held before the Plan is submitted to ACF, but no earlier than nine months prior to the effective date of a Plan. We recognize that States may have established public comment mechanisms that coincide with their budgetary cycle but not with our usual time frames for public hearings and Plan submittal. Therefore, we wish to clarify our intention in this area.

It is our expectation that the Lead Agency will submit at least a draft of the Plan for public comment through a hearing. We believe that, in some instances, the CCDF Plan may be the only public document that summarizes the child care policy of the State. As such, the Plan is an important part of the effort to keep the public well informed of State policies and programs.

ACF does not believe that the public hearing is held for the purposes of ''approving'' the Plan as it will be submitted, but rather to solicit public comment and input into the services that will be provided through the CCDF. For this reason, we are proposing a flexible process that does not create an undue burden on Lead Agencies, yet insures that the statutorily required public input is obtained.

The Plan that is submitted to ACF must reflect the program that will be conducted and must incorporate any changes to the program that the Lead Agency chooses to adopt as a result of the input received during the public hearing. We advise the Lead Agency to retain a copy of the draft Plan that it made available for public comment in fulfillment of this requirement. We also remind Lead Agencies that substantive changes in their programs, after their Plans are submitted to ACF, must be reflected by amending the Plan per § 98.18(b).

The potential impact of PRWORA on the child care programs in every State cannot be underestimated. We believe the public should be involved in creating the flexible child care systems allowed by PRWORA. Therefore, the Plan to be submitted to ACF for the Federal Fiscal Year beginning October 1,

1997, is subject to the amended statutory hearing requirement. All Lead Agencies must conduct a new public hearing before submitting the Plan to ACF.

As discussed above at § 98.12, we believe that ongoing coordination and consultation processes are vital to the design of a successful program. Therefore, at § 98.14(a) we have included a minimum list of State agencies with which the Lead Agency must coordinate the provision of services under the CCDF. The results of the coordination with these State agencies must be reflected in each biennial Plan submitted to ACF.

Both the public hearing and the coordination and consultation processes must be undertaken each time the entire Plan is required to be submitted. Although an amendment to the Plan is not subject to the regulatory hearing requirement, State rules may require a hearing or public comment period.

Assurances and Certifications (Section 98.15)

The PRWORA amendments made a number of changes to the assurances under the CCDBG. In several instances the term ''assure'' was replaced by the term ''certify.'' Also, as described below, the amendments changed the content of two of the former assurances and some assurances were eliminated.

While ACF believes that there is no practical difference between an assurance or certification, when both are given in writing, the proposed amendments have grouped the assurances together at § 98.15(a) and the certifications together at § 98.15(b).

Regarding specific substantive changes, the new section 658E(c)(2)(D) of the Act replaces the former assurance regarding consumer education. The proposed corresponding regulatory amendment at § 98.15(b)(3) uses the statutory language requiring the Lead Agency to certify it ''will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.''

The new section 658E(c)(2)(E) does not contain prior language requiring Lead Agencies to have in place a registration process for unregulated care providers that provided care to children receiving subsidized care under the CCDBG Act. We, therefore, removed the assurance formerly found at § 98.15(i). We note, however, that the Lead Agency has the flexibility to continue to maintain a registration process for providers if it chooses. This process has enabled States to maintain an efficient payment system. In addition it has provided a means to transmit relevant information, such as health and safety requirements and training opportunities, to providers who might otherwise be difficult to reach.

The Act also revises the requirement that providers meet all licensing and regulatory requirements applicable under State and local law. The revised requirement proposed at § 98.15(b)(4) mirrors the new statutory language that there be ''in effect licensing requirements applicable to child care services provided within the State.''

For tribal programs, the amendments specifically provide that, ''in lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter'' (section 658E(c)(2)(E)(ii)). ACF is in the process of arranging those consultations.

The PRWORA deleted requirements formerly found in the statute at section 658E(c)(2)(H), (I), and (J). These provisions, which related to reporting reductions in standards, reviewing State licensing and regulatory requirements, and non-supplantation would therefore be deleted by this proposed revised rule.

Finally, we propose at § 98.15(a)(6) that States provide an assurance that they have not reduced their level of effort in full-day/full-year services if they use pre-K expenditures to meet the MOE requirement, as discussed further at § 98.53.

Plan Provisions (Section 98.16)

We have amended § 98.16 to reflect changes in the Plan resulting from PRWORA. For example, we have deleted the language on registration and the calculation of base-year level-of-effort previously found at § 98.16(a)(13), (14) and (16). We substituted for them the statutory requirements for the Lead Agency to provide detailed descriptions of its parental complaints process at § 98.16(m) and its procedures for parental access at § 98.16(n). Similarly, we have modified some language to reflect new statutory language. For example, § 98.16(h) now discusses the additional purposes for which funds may be used, and § 98.16(l) now requests the summary of facts upon which payment rates were determined, including the conduct of a market rate survey. Section 98.16(c) has been expanded to include the entities designated to receive private donated funds pursuant to § 98.53(f). We have also modified the language at § 98.16(g)(2) to reflect broader flexibility concerning the use of in-home care. This change is addressed more fully under our discussion of parental choice later in this Preamble. The other changes in Plan provisions are more fully discussed in the related sections that follow.

We take this opportunity to correct the wording of § 98.16(j), formerly § 98.16(a)(10), concerning health and safety requirements. We have removed the word ''minimum'' here since the legislation contains no such qualification, nor do our regulations limit the flexibility to establish such requirements. We note that § 98.41 remains unaffected by this correction since that section did not include the use of the word ''minimum.''

We have also proposed to add § 98.16(p), which would require the Lead Agency to include in the CCDF Plan the definitions or criteria used to implement the exception to TANF work requirement penalties that applies when a single custodial parent with a child under age six has demonstrated an inability to locate needed child care. Among others, the definitions or criteria would include ''appropriate child care,'' and ''affordable child care arrangements.'' We elaborate on this requirement in the discussion of consumer education at § 98.33.

Finally, we propose to add § 98.16(q), which provides that the Lead Agency describe State efforts to ensure that pre-Kindergarten programs, for which Federal matching funds are claimed, meet the needs of working parents. This requirement is discussed at § 98.53.

Period Covered by Plan (Section 98.17)

The statute was amended at section 658E(b) to eliminate the three-year initial period for State Plans. We therefore made corresponding amendments in this proposed rule to provide that all Lead Agencies for States, Territories, and Tribes must submit new Plans every two years. This process begins with the Plans to be submitted in summer 1997 for approval for implementation on October 1, 1997. Those Plans, when approved, will be applicable for Federal Fiscal Years 1998 and 1999. All current Lead Agencies must submit new Plans if they wish to receive the CCDF funds that become available on October 1, 1997.

Subpart C—Eligibility for Services

A Child's Eligibility for Child Care Services (Section 98.20)

General eligibility. The amended statute at 658P(4)(B) expands the definition of ''eligible child'' to include families whose income does not exceed 85 percent of the State median income for a family of the same size, instead of the 75 percent level previously stipulated. Therefore, § 98.20(a)(2) is amended to reflect that change.

We amended the regulation at § 98.20(a)(1)(ii) regarding the option to serve dependent children age 13 and over who are physically or mentally incapacitated or under court supervision. We retained the State option to serve older children. However, our amendment removes the reference to the definition of ''dependent child'' in the State plan under title IV–A of the Social Security Act, since the amended title IV–A of the Social Security Act no longer requires a State to adopt a single definition of ''dependent child.'' We are proposing instead that States may elect to serve children age 13 or older who are physically or mentally incapacitated or under court supervision up to age 19, if they include the age limit in the eligibility and priority terminology section of their CCDF Plan.

Additionally, the statute eliminates the requirement for States to reserve a specific portion of their funds for activities designed to establish or expand and conduct early childhood development or before- and after-school care programs. Therefore, the regulations providing additional conditions for eligibility for before- and after-school and early childhood development services at § 98.21 are deleted. ACF believes that the setaside enabled many States to develop and expand such services. Further, the FY 1997 Appropriations Bill included $19 million in Discretionary funds which, according to the Conference Report, H.Rpt. 104–863 (1996), were targeted specifically for resource and referral activities and for school-age child care activities. This action acknowledges the important role that school-age child care plays in the lives of families. With the added flexibility under the amended CCDBG Act States can continue to provide child care services to all eligible children, including these targeted populations, without a requirement that specific portions must go to any particular program.

Foster Care and Protective Services

We are clarifying that grantees have the flexibility to include foster care in their definition of protective services in their Plan and thus provide child care services to children in foster care in the same manner in which they provide services to children in protective services.

We previously distinguished between children in protective services and children in foster care by allowing child care subsidies for foster care only when the foster parent is working, in education or in training. The distinction was made only in the preamble language; the regulatory and statutory language provides for child protective services as a separate eligibility criterion but is silent about foster care. Therefore, this change in interpretation does not require a regulatory change.

Under the existing regulations, a child in a family that is receiving, or needs to receive, protective intervention is eligible for child care subsidies if he or she remains in his or her own home even if the parent is not working, in education or in training. In these instances, child care serves the child's needs as much or more than the parent's needs. In many States, Territories and Tribes, however, foster care is an integral part of the protective services system. Some grantees do not differentiate between protective services for families who remain intact and for those children who are in a foster placement.

Lead Agencies electing to include foster care in their definition of protective services are required to state so in their CCDF Plan. If Lead Agencies do not include foster care in their definition of protective services, they must tie eligibility for CCDF child care of children in foster care to the status of the foster parent's work, education or training.

We also wish to clarify the type of CCDF-funded child care services allowable for families who also receive protective services. In the preamble to the current regulations (57 FR 34360, Aug 4, 1992), we gave Lead Agencies the option to allow child care for more than 24 consecutive hours when it is due to the nature of the parent's work, and as long as the care is actually child care, not ''institutional'' services. Thus, child care normally covers a less than 24-hour period except in instances where the work schedule of the parent(s) requires longer periods of care.

Regarding respite child care, we said in the preamble (57 FR 34368, Aug. 4, 1992), ''Grantees have the flexibility to allow a child receiving, or in need of, protective services, to receive respite child care.'' We wish to clarify that respite child care is allowable for only brief, occasional periods in excess of the normal ''less than 24 hour period'' in instances where protective services parent(s)—including foster parents where the Lead Agency has defined protective service families to include foster care—need relief from caretaking responsibilities. For example, a child care arrangement by someone other than the custodial parent for one weekend a month to give relief to the custodial parent(s) that are protective service families is acceptable. We believe that this kind of respite child care, if necessary for support to families with children in protective services, would be an acceptable use of CCDF funds.

If a State or Tribe uses CCDF funds to provide respite child care service, i.e., for more than 24 consecutive hours, to families receiving protective services (including foster families when defined as protective services families), the CCDF Plan must include a statement to that effect in the definition of protective services. We note this definition of ''respite child care'' may differ from how States or Tribes define it for other purposes (e.g., child welfare). Thus, respite child care must be specified in the Lead Agency's Plan if it is to be considered an allowable expenditure under CCDF.

Finally, we have reconsidered our position concerning the selection of providers in child protective services (CPS) cases. In the preamble at 57 FR 34369, Aug. 4, 1992 we suggested that the CPS caseworker could question, but only on a case-by-case basis, a parent's choice of provider and could determine that the choice of provider is not in the best interest of the child.

The children and families who receive, or who need to receive, protective services are obviously in crisis. The CPS system must respond quickly and appropriately, yet sensitively, to the needs of such families—the need to protect the child should be foremost.

To meet these needs, some States have higher licensing standards for, or established networks of, specially trained child care providers to be used in CPS cases. In such instances, we believe that the State's obligation to protect the child would best be accomplished by allowing the State to require the use of such providers as the norm in CPS cases, if the State so chooses. The parent could, nevertheless, request another provider, which the CPS caseworker would consider on a case-by-case basis. Because our policy was originally only stated in preamble, no change to the regulations is required.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

Parental Choice (Section 98.30)

Cash as a certificate. Since welfare reform has raised issues about methods of paying for child care, we wish to provide clarification with respect to child care certificates provided in the form of cash. In defining the term ''certificate,'' the statute at 658P(2) says, ''The term 'child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government * * * directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider.''

With a certificate or two-party check, the Lead Agency can ensure that money is paid to a provider who meets applicable health and safety requirements. This is not the case when a Lead Agency provides cash to a parent. We strongly discourage a cash system, because providers must meet health and safety standards, and we believe that the use of cash can severely curtail the Lead Agency's ability to conform with this statutory requirement.

If, nevertheless, a Lead Agency chooses to provide cash, it must be able to demonstrate that: (1) CCDF funds provided to parents are spent in conformity with the goals of the child care program as stated at section 658A of the Act, i.e., that the money is used for child care; and (2) that child care providers meet all applicable licensing and health and safety standards, as required by section 658E(c)(2) (E) and (F) of the Act. Lead Agencies, therefore, may wish to consider having parents who receive cash attest that the funds were used for child care and to identify the provider. Such a statement would help assure that the funds were expended as intended by the statute and lessen the possibilities for fraud. Finally, Lead Agencies are reminded that they must establish procedures to ensure that all providers, including those receiving cash payments from parents, meet applicable health and safety standards.

Availability of certificates. Section 658E(c)(2)(A) of the Act requires States to provide assurances that parents of each eligible child who receives or is offered CCDF child care services are given the option of (1) enrolling their children with a provider who has a grant or contract to provide services; or (2) receiving a child care certificate. The Act also requires that children who are to be enrolled in contracted slots must be placed with the provider of their parents' choice whenever possible. This statutory requirement is reflected in the regulations at § 98.30(a). The requirement basically is repeated at § 98.30(d) (formerly § 98.30(e)).

Based on our experience administering the CCDBG program, we have found that the duplication of the certificate option in the regulations has created some misunderstanding that the CCDBG Act gives preeminence to certificates. We wish to clarify that repetition of the provision should not be interpreted as giving preeminence to certificates. Both the statute and the regulations promote parental choice, not a specific method for achieving choice. Neither the statute nor the regulation can be interpreted accurately as giving a preference to certificates or to contracted slots.

If a choice of providers is denied to parents to whom services are offered, the complaints process set forth in § 98.93 provides an appropriate mechanism for redress. The Administration for Children and Families will respond to all complaints filed through this process.

We want to clarify that, although certificates must be an option for parents whenever services are offered, it may not be necessary to offer certificates whenever services are being used. For example, a local program might not offer new child care services during some portion of the program year because all available funds have been assigned to participating eligible children and are being used or ''reserved'' for those specific children. Availability of funding will continue to determine when child care subsidies are to be offered.

We want to emphasize that Lead Agencies are not precluded from entering into grants or contracts for child care services. Depending upon the child care needs of the eligible population in discrete geographic markets, grants and contracts may be necessary to ensure a stable supply of child care services. In essence, the Lead Agency must make a good faith effort to balance the funding for grants or contracts and certificates to ensure that parents have optimum choice among quality child care options as stipulated in the legislation and reinforced in the existing regulation.

In conducting on-site program reviews, we have found that Lead Agencies are operating certificate programs that provide for parental choice. While some offer only certificates, others commit funds on a proportional basis between certificates and contracts based on the particular needs of individual areas or populations. Some Lead Agencies, for example, have found that stable child care is more difficult to find in rural or inner-city areas, for infants, or for children with special needs and have therefore contracted with competent providers to address these specific shortages.

In planning the distribution of funds for grants or contracts and certificates, Lead Agencies should ensure that parents who choose certificates are not placed on a waiting list while substantial numbers of contracted slots in the same area remain unutilized.

Child care administrators have told us that there are areas where the need for subsidized low-income child care exceeds the available resources. Thus, if certificate funds are fully reserved for children who are already enrolled, and no subsidized slots are available, it may be necessary to begin a waiting list for certificates. Similarly, because many Lead Agencies allocate funds on a locality-by-locality basis, there may be waiting lists in some areas, while services are still available in others.

In addition to a certificate's being used for child care services, the statute at amended section 658P(2) stipulates that a certificate can also serve as a deposit for child care services, if such a deposit is required of other children being served by the provider. We have added regulations at § 98.30(c)(3) to reflect this new provision.

The amendments eliminated language at section 658E(c)(2)(A)(iii) requiring a certificate program to be in place by October 1, 1992, since all Lead Agencies must now have a certificate program in place, except for Tribes that are exempt under § 98.83(f). We have amended § 98.30 of the regulations accordingly.

We have also amended § 98.30 to reflect that section 658E(c)(2)(E) of the Act no longer requires registration of providers. For further discussion about registration, see the preamble at § 98.45.

In-home care. In-home child care is still a required category of care; however, since this care is provided in the child's own home it has unique characteristics that deserve special attention. First, in-home care is affected by interaction with other laws and regulations. For example, in-home providers are classified as domestic service workers under the Fair Labor Standards Act (FLSA) (29 U.S.C. Section 206(a)) and are therefore covered under minimum wage. As employees, in-home child care providers are also subject to tax requirements. In highlighting these special considerations, we also note that

whenever the FLSA and other worker protections apply, ACF is committed to maintaining the integrity of these protections. A strong commitment to work, and therefore to worker protections, is critical to welfare reform.

Second, child care administrators have faced a number of special challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. For that reason, we propose to give Lead Agencies greater latitude to impose conditions and restrictions on in-home care. We have revised § 98.16(g)(2) to require that Lead Agencies, in their CCDF Plans, specify any limitations on in-home care and the rationale for those limitations.

We are mindful that in-home care plays a valid and important role in meeting the needs of working parents, and that many participants in subsidized care programs rely on such care to meet their family needs. Access to care that meets the needs of individual families is critically important to parents and children, to schools and the workplace, and to other community institutions that interface with the family. While in-home care represents only a small proportion of all available care in most communities, it may be the best or only option for some families and may prove valuable, necessary and cost-effective when compared to other options. There are a number of situations in which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. Part-time employees often find it more difficult to make child care arrangements than do those who work full-time. Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes. Given the general scarcity of school-age child care in many communities, in-home care may enable some families to avoid latchkey situations before school, after school, and when school is not in session. For many families, in-home care by relatives also reflects important cultural values and may promote stability, cohesion and self-sufficiency in nuclear and extended families.

We urge child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may play in the ability of parents to manage work and family life. Although in-home care does not represent a large share of the national supply, it fills an important niche in the structure and functioning of local child care markets by extending the ability of parents to care for children within their own families, closing gaps in the supply of community facilities, and creating a bridge between adult care and self- or sibling-care as children near adolescence.

Some Lead Agencies may choose to limit in-home care because of cost factors. For example, a State might determine that minimum wage requirements result in payments for in-home care serving only one or two children that are much higher than the payments for other categories of care. Therefore, the Lead Agency could elect to limit in-home care to families in which three or more children require care. The payment to the in-home provider would then be similar to the payment for care of the three children in other settings. This ability to limit in-home care allows Lead Agencies to recognize the same cost restraints that families whose care is unsubsidized must face.

However, since in-home care has proven to be an important resource, we expect Lead Agencies to consider family and community circumstances carefully before limiting its availability. For that reason, we are proposing that CCDF Plans specify any limitations placed on in-home care and the rationale for those limitations.

ACF recognizes that giving Lead Agencies greater latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory child care arrangements and thus their ability to participate in work, education or training. We also recognize the challenges of implementing health and safety requirements in the child's own home, monitoring in-home providers, and complying with Federal wage and tax laws governing domestic workers. Therefore, we are seeking focused comments on our regulatory proposals for in-home care and would especially appreciate suggestions on how to balance parental choice, cost effectiveness, and adherence to other Federal and State provisions, such as the FLSA, that are unique to in-home settings.

Parental Access (Section 98.31)

We have amended the regulations at §§ 98.31 and 98.16(n) to reflect the new statutory requirement at section § 658E(c)(2)(B) that Lead Agencies have in effect procedures to ensure unlimited parental access and to provide a detailed description of those procedures. We have also amended § 98.15(b)(1) to reflect the statutory change to certify rather than assure that procedures are in effect to ensure unlimited access.

Parental Complaints (Section 98.32)

We have added paragraph (c) to the regulations at § 98.32 and amended § 98.16 by adding paragraph (m) to reflect the new statutory requirements at § 658E(c)(2)(C) on parental complaints. Under the changes, Lead Agencies must provide a detailed description of how a record of substantiated parental complaints is maintained and made available to the public on request. We have also amended the regulation at § 98.15(b)(2) to reflect the requirement of the statute at 658E(c)(2)(C) that a Lead Agency ''certify'' rather than ''assure'' that it will maintain a record of substantiated parental complaints.

Consumer Education (Section 98.33)

We have amended the regulation at §§ 98.33 and 98.15(b)(3) to reflect the statutory requirement at section 658E(c)(2)(D) that the Lead Agency ''certify'' that it ''will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.'' It is important to emphasize that the use of the words ''collect and disseminate'' is more proactive and forceful than the former requirement that consumer education ''be made available'' to parents and the public. We also believe that by changing the wording, Congress wished to emphasize the importance of consumer education as a service to be provided by Lead Agencies. This emphasis is also stressed by the third goal of the CCDF, listed at section 658A(b) of the amended statute, ''to encourage States to provide consumer education information to help parents make informed choices about child care.'' Moreover, the amendment to the reporting requirements at section 658K(a)(2)(D)—reflected in the revised regulations at § 98.71(b)(3)—requires Lead Agencies to report twice a year on the manner in which consumer education information was provided to parents and the number of parents that received such information.

The statute previously specified the type of consumer education information that the Lead Agency had to provide: ''licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.'' The statute now is less prescriptive. Consumer education information is defined as that which ''will promote informed child care choices.'' Thus, the statute leaves it up to the Lead Agency to determine the type of information that will help the public and parents make informed child care choices.

While Lead Agencies have flexibility in providing consumer education, ACF strongly encourages Lead Agencies to promote informed child care choices by offering information about: the various categories of care; the freedom of parents to choose the type of care that best meets their needs; the Lead Agency's certificate system; the rates for the various categories of care; the sliding fee scale; a checklist of what to look for in choosing quality care; providers with whom the Lead Agency has contracts for care; the basic health and safety regulations that all providers must meet; the Lead Agency's policy regarding its file of substantiated complaints by parents that is available upon request as required by § 98.32; and local resource and referral agencies that can assist parents in choosing appropriate child care.

The best child care arrangements are developed in one-on-one consultation with trained or experienced counselors. Professional help with locating child care is time-and cost-efficient for both families and Lead Agencies. Thus, it may be in the Lead Agency's interest to invest in strategies such as co-location of child care resource and referral counselors in work development offices or agencies. Economists make the argument that good consumer information is critical to making the child care market function more like other markets. Moreover, experience has shown that printed materials alone may not always be a sufficient information source, particularly if parents have low literacy rates.

Exception to Individual Penalties in the TANF Work Requirement

Title I of the PRWORA amends Title IV–A of the Social Security Act and replaces the Aid to Dependent Children (AFDC) with a new block grant program entitled Temporary Assistance for Needy Families, or TANF. The new section 407(e)(2) addresses an exception to the work requirement in the TANF program and provides that a State may not reduce or terminate TANF assistance to a single custodial parent who refuses to work when she demonstrates an inability to obtain needed child care for a child under six, because of one or more of the following reasons:

(1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(2) Unavailability or unsuitability of informal child care by a relative or under other arrangements;

(3) Unavailability of appropriate and affordable formal child care arrangements.

The TANF penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the unavailability of appropriate, affordable child care can create unacceptable hardships on children and families. Since Congress provided that the new Mandatory and Matching child care funding be transferred to the Lead Agency under the CCDF and also provided that at least 70 percent of the new funding must be spent on families receiving temporary assistance, in transition from public assistance, or at risk of becoming eligible for public assistance, the Lead Agencies will be playing a dominant role in providing the child care necessary to support the strong work provisions found in TANF. It is critical, therefore, that CCDF Lead Agencies help disseminate information about the TANF exception. Knowledge of this exception on the part of parents also will be very important in promoting informed child care choices.

Therefore, we propose to require that Lead Agencies include information about it in their consumer education programs. This responsibility entails informing parents that: (1) TANF benefits cannot be reduced or terminated for parents who meet the conditions as specified in the statute and as defined by the TANF agency; and (2) the time during which an eligible parent receives the exception will count toward the time limit on benefits stipulated by the statute at section 408(a)(7).

In order for a Lead Agency to comply with this requirement, it will need to understand how the TANF agency defines and applies the terms of the statute to determine that the parent has a demonstrated inability to obtain needed child care. The elements that require definition consist of: ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.''

In our pre-regulatory consultations, some groups urged us not only to ensure that the CCDF agency disseminates information about the TANF penalty exception but to regulate the content of the definitions or criteria used to determine if a family is unable to obtain needed child care. The approach we have taken in this proposed rule provides flexibility and strikes an appropriate balance between the roles of the CCDF and TANF agencies. We recognize the flexibility of the TANF program to define the terms established by the statute. However, we strongly encourage TANF agencies to define ''appropriate care,'' at a minimum, as care that meets the health and safety standards of the CCDF program, specified at § 98.41. The definition should also take into account the results of many studies that show the value of quality child care for low-income children and the benefits to many of these children from more enriched child care.

We are requiring, under § 98.12 of the regulations, that Lead Agencies coordinate with TANF programs to ensure, pursuant to § 98.33(b), that case workers, eligibility workers, and others who work with TANF recipients in both the TANF and the CCDF programs will inform families with young children of their right not to be sanctioned if they meet the criteria set forth in the statute and plan. As part of this coordination, at § 98.16(p) we are requiring that the Lead Agency include in its plan the definitions or criteria the TANF program has adopted in implementing this exception to the work requirement.

The new section 409(a)(11) of the SSA specifies that if the TANF program sanctions parents who are eligible for this exception to the individual penalties associated with the TANF work requirements, it may incur a penalty of up to five percent of its grant. Therefore, coordination between the Lead Agency and the TANF program in this matter will serve the best interests both of the recipients of TANF benefits and the service agencies themselves. ACF will issue proposed rules on the TANF penalty provisions later this year.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

Compliance with Applicable State and Local Regulatory Requirements (Section 98.40)

We have amended the regulations at § 98.40(a) to reflect a change in Section 658E(c)(2)(E)(i) of the Act. The amendment requires Lead Agencies to certify that they have in effect licensing requirements applicable to child care services, and to provide a detailed description of those requirements and of how they are effectively enforced. This

change is also reflected in §§ 98.15 and 98.16. The statute notes, however, that these licensing requirements need not be applied to specific types of providers of child care services.

Because amendments to section 658P(5)(B) have eliminated the requirement for registration of unlicensed providers serving families receiving subsidized child care, we have deleted the former regulation § 98.40(a)(2) requiring registration. This change, however, does not prevent Lead Agencies from continuing to register unlicensed or unregulated providers, and we encourage them to do so. Those Lead Agencies that choose not to have a registration process will be required to maintain a list of providers. We discuss this in more detail at § 98.45.

Health and Safety Requirements (Section 98.41)

Section 658E(c)(2)(F), as amended, requires a Lead Agency to certify, rather than assure, that health and safety regulations applicable to child care providers are in place. We have amended the regulations at §§ 98.41(a) and 98.15(b)(5) to conform with the amended statute.

We propose to amend the regulation at § 98.41(a)(1) to require that States and Territories incorporate in their health and safety provisions (by reference or otherwise) the latest recommendations for childhood immunizations of their respective State or territorial public health agency. While many State and territorial public health agencies adopt the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC), we wish to emphasize that this proposed new requirement does not impose Federal standards for immunization but allows for decision of the individual State or Territory regarding immunization requirements.

The proposed new immunization requirements at § 98.41(a)(1) apply only to States and Territories. While tribal Lead Agencies must meet health and safety requirements that address the prevention and control of infectious diseases (including immunizations), they do not have to meet the specific immunization requirements that apply to States and Territories. In the proposed rule published May 11, 1994 (59 FR 24510), which was never finalized, ACF proposed specific immunization requirements for Tribes. However, consistent with the amendments in PRWORA, we have not included those specific requirements in this proposed rule. We anticipate that tribal immunization requirements will be addressed in the minimum child care standards that are being developed by ACF in consultation with Indian Tribes and tribal organizations. New section 658E(c)(2)(E)(ii) of the CCDBG Act requires the development of minimum child care standards for Indian Tribes and tribal organizations.

Our youngest and most vulnerable children remain at risk for vaccine-preventable diseases. The measles epidemic of 1989–1991 resulted in more than 55,000 reported cases of the disease, 11,000 hospitalizations, and more than 130 deaths. Half of those who died were infants. Although immunization rates for two-year-olds are now at an all-time high of 76 percent, and vaccine-preventable diseases are at an all-time low, more than one million two-year-olds still are not adequately protected. Childhood vaccines protect young children against infectious diseases that could lead to serious illness and deaths. Data reveal that by age two, when children should have received most of their vaccines, more than 24 percent of American children are not adequately protected against childhood diseases. Over one million children need at least one dose of polio vaccine; 640,000 children require a dose of MMR (measles/mumps/rubella); and about 530,000 children have not received all their pertussis shots.

Since a large percentage of children receiving child care assistance are under five years of age, we believe that the immunization requirement will have a positive impact in reducing the incidence of infectious diseases among preschool age children. Vaccines are the most cost-effective way to prevent childhood diseases. Nationally, approximately $10.00 are saved in direct medical costs for every dollar spent on the measles/mumps/and rubella (MMR) vaccine, $6.00 are saved for every dollar spent on the diphtheria/tetanus/pertussis (DTP) vaccine, and $3.00 are saved for every dollar spent on the oral polio vaccine (OPV). For every dollar spent on immunization, as much as $29.00 can be saved in direct and indirect medical costs.

In requiring children to be age-appropriately immunized, we considered that parents may not always be able to access immunizations easily. However, a number of national initiatives are under way to promote immunizations for all children. In response to disturbing gaps in the immunization rates for young children in America, a comprehensive Childhood Immunization Initiative (CII) was developed. CII addresses five areas:

—Improving immunization services for needy families, especially in public health clinics;
—Reducing vaccine costs for lower-income and uninsured families, especially for vaccines provided in private physician offices;
—Building community networks to reach out to families and ensure that young children are vaccinated as needed;
—Improving systems for monitoring diseases and vaccinations; and
—Improving vaccines and vaccine use.

The CDC and its partners in the public and private sectors are working to build a comprehensive vaccination delivery system. The goals of the CII are to ensure that at least 90 percent of all two-year-olds receive each of the initial and most critical doses, to reduce diseases preventable by childhood vaccination to zero, and put in place a system to sustain high immunization coverage. Since 1994, the National Immunization Survey (NIS) has been used to provide immunization coverage estimates for all 50 States and 28 large urban areas.

As part of the efforts in the CII, immunization programs on the State and local level are collaborating with WIC programs (Special Supplemental Food Program for Women, Infants, and Children) to focus on children's immunization. For example, local WIC clinics check the immunization records of WIC participants, assist families to find a primary health care provider, and provide immunization information. On-site immunization services are sometimes also provided at local WIC clinics.

On September 30, 1996, the CDC awarded funds ranging from $130,000 to $250,000, to education agencies in four States (New York, South Dakota, West Virginia, and Wisconsin) to deliver immunization services to preschool-aged children in health centers at elementary schools. Over the past four years, welfare reform waivers were granted to 18 States to allow them to require parents to immunize their children as a condition of receiving assistance.

Surveys of licensed child care facilities indicate that the majority of States require some proof of immunizations for children enrolled in licensed or regulated child care centers and family day care homes. However, individual States differ in their specific requirements and regulatory approaches, and requirements for the immunization of children in child care settings that are exempt from licensure or other regulatory provisions vary widely.

Lead Agencies have the flexibility to determine the method they will use to implement the immunization requirement. For example, they may require parents to provide proof of immunization as part of the initial eligibility determination and again at redetermination, or they may require child care providers to maintain proof of immunization for children enrolled in their care. The requirements established by the Lead Agency will generally be applicable to all children receiving CCDF assistance and in all child care settings. However, States have the option to exempt the following groups:

- Children who are cared for by relatives (defined as grandparents, great grandparents, siblings—if living in a separate residence—aunts and uncles);
- Children who receive care in their own homes;
- Children whose parents object on religious grounds; and
- Children whose medical condition contraindicates immunization.

While families are taking the necessary actions to comply with the immunization requirements, Lead Agencies must establish a grace period during which children can continue to receive child care services.

Finally, we encourage all Lead Agencies to consider requirements that provide for documenting regular updates of a child's immunizations.

Section 98.30(f) (2) and (3) prohibit any health and safety requirements from having the effect of limiting parental access or choice of providers, or of excluding a significant number of providers. We do not think these new immunization requirements will have such an effect. Rather, we are convinced that, when applied to all providers, they will have the effect of enhancing parental choice of providers, since all providers will have the same requirements. More importantly, however, the requirements will promote better health for children, their families, and the public.

Other revisions. Based on former statutory provisions, § 98.41(c) of the 1992 regulations required a Lead Agency to include in its annual report a rationale for any reduction it might have made in standards applicable to child care, and paragraph (d) required each Lead Agency to review the licensing requirements of each licensing agency in the area served by the Lead Agency and report its findings in its first or second annual report. We have deleted both these requirements because of changes in the statute at section 658E(c)(2) (H) and (I).

Pursuant to section 658P(5)(B) of the amended statute, we have added ''great grandparents, and siblings (if such providers live in a separate residence)'' to the list of relatives who, at State option, may be exempted from the health and safety requirements at § 98.41(e) and to the definition of ''eligible child care provider'' at § 98.2.

Sliding Fee Scales (Section 98.42)

We have simplified § 98.42 of the regulations by removing separate references to services under §§ 98.50 and 98.51.

For a further discussion of copayments, see § 98.43.

Equal Access (Section 98.43)

We have changed the title of this section to ''Equal Access,'' from ''Payment Rates,'' because the amended CCDBG Act now focuses on equal access for families receiving subsidies to child care services. Under the amendments, Lead Agencies are required to certify that payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to ineligible families. The amended section 658E(c)(4)(A) also requires the Lead Agency to provide a summary of the facts relied on to determine that its payment rates are sufficient to ensure equal access.

The proposed regulation at § 98.43(b) requires a Lead Agency to show that it considered the following three key elements in determining that its child care program provides equal access for eligible families to child care services:

1. Choice of the full range of categories and types of providers, e.g., the categories of center-based, group, family, in-home care, and types of providers such as for-profit and non-profit providers, sectarian providers, and relative providers as already required by § 98.30.
2. Adequate payment rates, based on a local market survey conducted no earlier than two years prior to the effective date of the current Plan; and
3. Affordable copayments. These elements must be addressed in the summary of facts submitted in a Lead Agency's biennial Plan, pursuant to § 98.16(l).

1. Full range of providers. All working parents, regardless of income, need a full range of categories and types of providers from which they may choose their child care services, because their child care needs vary considerably according to the child's age and special needs, the parents' work schedule, provider proximity, cultural values and expectations. Therefore, we believe that the statutory requirement of equal access means that low-income working parents receiving CCDF-subsidized care must have a full range of the categories and types of providers from which to choose care that they believe best meets their needs and those of their children. The parental choice requirements at § 98.30 already require that parents who receive certificates be afforded such variety.

2. Adequate payment rates. The statute at section 658E(c)(4)(A) eliminated the requirement that, in establishing payment rates, the Lead Agency take into account variations in the cost of providing care in different categories of care, to different age groups, and to children with special needs. We have amended § 98.43 to conform with the statute. However, while eliminating the requirement for different payment rates for different categories of care, Congress added a requirement that Lead Agencies provide ''a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such [equal] access.''

The statute suggests that if families receiving child care subsidies under the CCDF are to have equal access to child care, the payment rates established by a Lead Agency should be comparable to those paid by families who are not eligible for subsidies. In other words, the payment rates should reflect the child care market. Although the statute has changed, the reality remains that the market reflects differences along several dimensions, and we do not believe that Congress expected Lead Agencies to establish a single payment rate for all types of child care.

Child care is often the major factor in whether families are able to work—and access to a variety of child care arrangements is necessary both to support today's increasingly diverse workforce and workplace demands, and to ensure that the healthy development of children is not compromised. The focus of PRWORA on work further highlights the need for CCDF Lead Agencies, which now are required by statute to administer the new Mandatory and Matching Funds, to establish payment rates that support work as well as enable the developmental needs of children to be met.

The major variable in the cost of child care is the age of the child, especially the added expense of caring for infants and very young children. Under PRWORA, many more families with infants and pre-school-aged children will be required to participate in work activities for longer hours per week. Payments that do not reflect the expense of caring for very young children will frustrate the ability of families to work. In providing the exception to the

individual penalties under TANF for single custodial parents with a child under age six who cannot obtain needed child care, Congress recognized the special difficulties of locating care for young children. We have proposed a consumer education provision at § 98.33 that recognizes the relationship between the TANF provision and the responsibilities of the CCDF Lead Agency. Consequently, we also expect Lead Agencies to ensure that their payment rates reflect the market rate variations in the cost of providing child care to different age groups as well as the additional costs of providing care to children with special needs. We anticipate that market rate surveys will also show variations in rates among categories of care, and we expect any significant variations to be reflected in the Lead Agency's payments.

A system of child care payments that does not reflect the demands of the market makes it economically infeasible for many providers to serve low-income children. This undermines the statutory and regulatory requirements of equal access and parental choice. Experience with the now-repealed title IV–A child care programs and the CCDBG suggests that providers limit their enrollment of children with subsidies because the subsidy payments were too low. Similarly, failing to compensate providers timely or not reimbursing them for days when children are absent also causes providers to refuse care to children with subsidies.

At § 98.43(c) we have added a provision prohibiting different payment rates based on a family's eligibility status or circumstances. This provision means that the Lead Agency may not establish payments for TANF families that differ from the payments for the families of the working poor, or for families in education or training, for example. We believe that multiple payment rates based on an eligibility status precludes the statutorily-required equal access to child care for families receiving CCDF subsidies. Additionally, such multiple payment rates would frustrate one of the main intents in amending the Act—to have a unified child care system with only a single set of rules. This purpose would be undercut if different payment rates based on eligibility criterion were permitted.

With the exception of payments for children with special needs, who sometimes require services on a highly individualized basis, we believe that a survey of market rates is the only methodologically sound way for Lead Agencies to gather the facts necessary to establish payments that are realistic and thus provide the required equal access for low income families. Implementation of this provision should not be a burden to States, which were required to conduct local market surveys in implementing the now-repealed title IV–A child care programs. We also know from comparing State plans for the two programs, that the great majority of States used the IV–A payment rates for subsidies provided under the Child Care and Development Block Grant. Thus, States have had a number of years' experience with the survey process. States retain the flexibility to design such surveys; we have not proposed a survey methodology.

We propose that Lead Agencies conduct such a survey biennially to ensure that their payments reflect reasonably current market conditions. We have amended the regulations at §§ 98.43(b)(2) and 98.16(l) to include this proposed requirement. Lead Agencies must provide evidence in the biennial Plan to show that a local market rate survey was conducted no earlier than two years prior to the effective date of the currently approved Plan, together with an explanation of how the survey was conducted.

We have not established specific requirements for the payments established by Lead Agencies. Lead Agencies have the flexibility to establish payments, based on a biennial survey, which provide CCDF-subsidized families with equal access to the full range of care in their areas. We would consider parents to have equal access, however, if payments are established at least at the 75th percentile of the rate in the child care market. States and families have both recognized that the 75th percentile, which we required in the now-repealed title IV–A child care programs, generally provided families receiving subsidies with a range of care that was adequate to support their work schedules and the needs of their children.

Since the requirement to conduct a market survey biennially is intended to ensure that payments reflect reasonably current market conditions, lengthy delays between the survey and basing the payments on that survey would undermine the intent of the requirement. Therefore, we propose that a Lead Agency conduct its survey no earlier than two years prior to the effective date of the currently approved Plan; and payments derived from that survey must be in place no later than the beginning of the second year of the Plan for which the survey was conducted. The survey will be the basis for payments for only two years.

We propose to revise §§ 98.43 and 98.16 to remove the ten percent limit on payment differences within a category of care. We also propose to remove the reference to limits on payment differences in § 98.16. This revision recognizes the change in focus of the statute to a factual basis for the establishment of payments and the elimination of the requirement to establish payment rates by category of care. It will also provide Lead Agencies the flexibility to recognize and compensate higher quality child care facilities and providers, including those that have obtained nationally recognized accreditation or special credentials. This will also give the Lead Agency the flexibility to address possible shortages of certain types of care—for example, care during non-traditional hours or on weekends—when the survey results for this care are incomplete, not obtainable, or contradict the agency's experience in providing such care.

3. Affordable copayments. The third essential element of equal access is that any copayment or fee paid by the parent is affordable for the family and sliding fee scales should not be designed in a way that limits parental choice. We wish to emphasize that Lead Agencies have flexibility in establishing their sliding fee scales. However, in our view, copayment scales that require a low-income family to pay no more than ten percent of its income for child care, no matter how many children are in care, will help ensure equal access.

Recent reports by the Census Bureau indicate that families with income below the poverty level pay a disproportionate share of their income—18 percent—for child care; whereas families above the poverty level pay only seven percent of their income for child care. The size of the fee paid by a low-income working parent can be crucial in determining whether she and her family become, and remain, self-sufficient. When devising the fee scale Lead Agencies should try to ensure that small wage increases do not trigger large increases in copayments, lest continuation on the path to self-sufficiency be jeopardized for any family. The size of a fee increase is an especially important consideration because recent changes in the Food Stamp, housing assistance, Medicaid, SSI, and the Earned Income Credit programs may also affect the resources now available to a low-income working family.

Sliding fee scales must continue to be based on family size and income, as currently required at § 98.42(b). While Lead Agencies have flexibility to take

additional elements into consideration when designing their fee scales, basing fees on the cost or category of care could violate the statutory requirements of equal access and parental choice. Similarly, multiple fee scales based on factors such as a family's eligibility status would be precluded.

List of Providers (Section 98.45)

We have renamed this section ''List of Providers'' because the amendments to section 658(E)(c)(2)(E) of the Act eliminated the language on the registration of unlicensed or unregulated providers. We have also deleted the requirement at § 98.16 to describe the registration process in the biennial Plan.

At § 98.45, however, we propose to require any Lead Agency not having a registration process to maintain a list of the names and addresses of all unregulated providers. It is essential that Lead Agencies have some simple, standardized system to record the names and addresses of unlicensed providers in order to pay them and to provide them with pertinent information about health and safety regulations and training.

The regulations would no longer specifically require Lead Agencies to have a registration process for providers not licensed or regulated under State or local law before paying them for child care services. However, Lead Agencies should note that they may continue such a system, and we strongly encourage them to do so.

Subpart F—Use of Block Grant Funds

Child Care Services (Section 98.50)

The 70 percent requirement. Section 418(b)(2) of the PRWORA specifically requires the State to ensure that not less than 70 percent of the funds received by the State are used to provide child care assistance to families who are receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition off of such assistance program and families that are at risk of becoming dependent on such assistance program. We wish to clarify that the 70 percent requirement applies only to the Mandatory and Matching Funds. Further, the amended statute at 658E(c)(2)(H) requires the State to demonstrate in its CCDF plan the manner in which the State will meet the specific child care needs of these families.

States have great flexibility in designing a single comprehensive program to serve families. The need to coordinate and consult closely with the TANF program has been discussed at length in Subpart A of the preamble. In our consultation process we heard concerns that further regulations regarding the 70 percent requirement could hamper the State's ability to coordinate and develop a comprehensive program. We therefore will not regulate beyond the statutory language of this provision but have amended the regulation by adding the statutory provisions at § 98.50 (e) and (f).

Serving other low-income working families. Section 658E(c)(3)(D) as amended directs the State to ensure that a ''substantial portion'' of the amounts available (after a State has complied with the 70 percent requirement discussed above) is used to provide assistance to low-income working families other than those who are receiving assistance, transitioning off assistance or at risk of becoming dependent on assistance under Part A of title IV of the Social Security Act.

Since the income level for eligible children is increased in the statute to 85 percent of the State median income, it is clear that Congress intended for child care assistance to be available to more low-income working families than were previously eligible. We believe, however, that families whose income is less than 85 percent of the State median income may well be at risk of becoming dependent on assistance. Thus the two populations overlap.

The regulation at § 98.50(e) now provides the statutory description of the families who are to be served under the 70 percent provision. In addition § 98.50(f) is added to require the State, pursuant to the statute, to specify in its plan how the State will meet the needs of these families. We believe, based on our consultations, that the circumstances of low-income working families (whose income is below 85 percent of the State median income) are no different than the families specifically mentioned in those regulations and thus would expect that they would be treated similarly.

Since States are required to collect and report data concerning family income, including the number of families who are receiving temporary assistance under title IV of the Social Security Act, ACF will have the opportunity to monitor such reports to determine whether States are serving both welfare and at-risk families as the statute intends. Additionally, ACF will have the CCDF Plan, which includes the manner in which the State will meet the needs of families receiving assistance, transitioning off assistance or at risk of becoming dependent on assistance under Part A of title IV of the Social Security Act.

We therefore do not plan to require additional definitions of these populations. However, if the State elects to have a specific description of at-risk families, it could, for example, be included when defining very low income or in providing additional terminology related to conditions of eligibility or priority in the CCDF plan.

Activities to Improve the Quality of Child Care (Section 98.51)

Not less than four percent. Section 658G of the CCDBG Act was amended to direct that a State that receives CCDF funds shall use not less than four percent of the amount of such funds for activities to improve the quality of child care and availability of child care (such as resource and referral services). Section 98.51(a) provides that the not less than four percent requirement for quality applies to the aggregate amount of expenditures (i.e., Discretionary, Mandatory, and both the Federal and State share of Matching funds); it need not be applied individually to each of the component funds. Section 98.51(a) also provides that the four percent requirement applies to the funds expended, rather than the total of funds that are available but may not be used. Lead Agencies, however, have the flexibility to spend more than four percent on quality activities. Section 98.51(c) provides that the quality expenditure requirement does not apply to the maintenance-of-effort expenditures required by § 98.53(c) in order to claim from the Matching Fund.

The statute details specific activities that may be undertaken: activities designed to provide consumer education to parents and the public; activities that increase parental choice; and activities designed to improve the overall quality and availability of child care. ACF believes that activities that provide parents and the public with information about child care options will help to improve the quality of child care. As the public learns more about the need for and benefits of quality child care, we expect that the availability of quality child care will also expand, creating increased choices for parents.

The statute formerly provided five examples of activities to improve the quality of child care. These included resource and referral programs (cited in the amended statute), grants or loans to assist in meeting state and local standards, monitoring of compliance with licensing and regulatory requirements, training, and compensation. These activities continue

to be allowable quality activities under this minimum four percent requirement.

Lead Agencies have used these activities over the years to improve the quality of child care and we believe that they can continue to be used successfully. We also want to provide Lead Agencies with increased flexibility to develop other successful strategies by not restricting their options. We have added, therefore, regulations at § 98.51(a) based on the broad statutory language, while retaining the former options for specific activities. We will continue to collect, in the plan, descriptions of activities to improve the quality of child care services. We encourage Lead Agencies to evaluate the success of their efforts to improve quality and will disseminate promising practices.

States will need flexibility to design a child care delivery system that is customized to the needs of their families and that includes flexibility in the choice of activities that will improve the quality of child care. Since the requirement is expressed as a baseline it is clear that quality activities are important and must be included in developing a comprehensive plan.

Administrative Costs (Section 98.52)

Section 658E(c)(3)(C) of the amended Act limits the amount of funds available for the administrative costs of the CCDF program to ''not more than five percent of the aggregate amount of funds available to the State.'' Section 98.52(a) provides that the five percent limitation on administrative costs applies to the funds expended, rather than to the total of funds that are available but which may not be granted or used. Thus, Lead Agencies may not use five percent of the total funds available to them for administrative costs unless they use all the available funds including Matching Funds.

This provision also makes clear that the five percent limitation applies to the total Child Care and Development Fund. The five percent limitation need not be applied individually to each of the component funds—the Discretionary, Mandatory, and Matching (including the State share) Funds. We believe this flexibility will streamline the overall administration of the Fund. The limitation does not apply to the maintenance-of-effort expenditures required by § 98.53(c) in order to claim from the Matching Fund.

Section 98.52(a) lists administrative activities and is derived from the current regulations as modified by the PRWORA amendments and the Conference Agreement (H.R. Rep. 104–725 at 411). While the statute does not define administrative costs, it does preclude ''the costs of providing direct services'' from any definition of administrative costs.

The Conference Agreement specifies that the following activities ''should not be considered administrative costs'':

(1) Eligibility determination and redetermination;

(2) Preparation and participation in judicial hearings;

(3) Child care placement;

(4) The recruitment, licensing, inspection, reviews and supervision of child care placements;

(5) Rate setting;

(6) Resource and referral services;

(7) Training [of child care staff]; and

(8) The establishment and maintenance of computerized child care information systems.

Therefore, we have deleted from the current regulation's list of administrative activities at § 98.52(a) three activities: determining eligibility, establishing and operating a certificate program, and developing systems (formerly § 98.52(b)(1) (i), (iii), and (vi) respectively). We deleted ''establishing and operating a certificate program'' as an administrative activity, even though it was not listed in the Conference Agreement, because it appears that most of the components of a certificate program would not be considered to be administrative costs per the Conference Agreement. For example, certificate programs must determine and redetermine eligibility, provide the public with information about the program, develop and maintain computer systems, place children, offer resource and referral services, etc. Although we believe that many of the costs of a certificate program are not administrative, Lead Agencies must examine their certificate programs and ascribe to administrative cost those activities that are clearly administrative per § 98.52(a). Lead Agencies may wish to examine the components of other activities in this manner to ensure that they are correctly considering administrative costs in accordance with § 98.52(a) and the Conference Agreement.

While these proposed regulations reflect the Conference Agreement language, we are nevertheless concerned that States will misinterpret the intent of the change and re-direct a disproportionate amount of expenditures on these redesignated activities rather than on direct services to children. We wish to emphasize that services to children is the purpose for which the CCDF was created. Therefore, we would not expect a large increase in costs to activities that are not direct services to children. We will closely monitor such expenditures to determine if States are overspending for such activities at the expense of services. As one method of monitoring, we intend to require that the proposed CCDF financial reporting forms separately collect the amounts that are expended on developing systems and other kinds of non-direct service activities. If we determine that there are problems, we reserve the right to re-visit the policy and regulate in the future. Nevertheless, States should know that any administrative components of the activities that have been re-designated as non-administrative in nature are subject to the CCDF administrative cost cap.

Lastly, we clarify in § 98.52(c) that the non-Federal expenditures required of the State in order to meet its maintenance-of-effort threshold for receiving matching funds are not subject to the five percent limitation on administrative costs. Nevertheless, audits of State reports of maintenance-of-effort expenditures should indicate that administrative expenditures included in those MOE amounts are reasonable, necessary for carrying out the services provided, and consistent with other provisions of law.

Administrative costs for Tribes. We have specifically noted at § 98.52(b) that Tribes, and tribal organizations are exempt from the five percent cap on administrative costs as it applies only to the entities defined as ''States.'' Tribes and tribal organizations are not currently subject to the administrative cost limitation at § 98.50(d) and we wanted to codify this existing exemption. Tribes, however, are subject to the requirements at § 98.83(g) regarding limits on administrative expenditures.

Matching Fund Requirements (Section 98.53)

Section 98.53 used to describe non-supplantation requirements. As those have been repealed by the PRWORA amendments, we are now using this section to discuss the Matching Fund requirements.

Terminology and general requirements. In this section we have used the phrase ''expenditures in the State'' to encompass not only local expenditures on child care but also private, donated funds that meet the requirements at § 98.53(e)(2), as explained below. Whenever the term ''State funds,'' ''State expenditures'' or ''non-Federal expenditures'' is used it should be understood to include State, local or permissible private donated funds that meet these requirements and

are expended for allowable child care purposes.

Section 418(a)(2)(C) of the Social Security Act creates a two-part matching requirement. First, a State must expend an amount that at least equals its allowable expenditures for the title IV–A child care programs during 1994 or 1995, whichever is greater. We refer to this amount as the ''maintenance-of-effort'' (MOE) threshold.

State expenditures in excess of its MOE threshold, up to a maximum determined by the statute, are matched at the 1995 Federal medical assistance rate. The total amount that can be matched rises each year and is equal to the sum appropriated for that year, less the amounts of the Mandatory Fund, the tribal allocation and the allocation for technical assistance. The maximum to be matched for each State is its share of that total based upon the proportion of the State's children under age 13 in 1995 to the national total of children under age 13 in 1995.

Section 98.53(c) lists the requirements that States must meet if they wish to claim Federal Matching Funds. In summary, this section requires that the State obligate all of its Mandatory Funds by the end of the fiscal year (FY) they are granted. Mandatory Funds need not be obligated before Matching Funds are claimed, provided that all Mandatory Funds will be obligated by the end of that FY. Second, they must expend State-only dollars in an amount that equals the State's MOE threshold described at § 98.53(c)(1). And third, they must obligate the Federal and State share of the Matching Fund by the end of the FY.

Section 98.53(b)(1) provides that all costs are matched at the Federal Medical Assistance Percentage (FMAP) for FY 1995, irrespective of the year of expenditure as directed by the statute. The FMAP rate pertains to both child care services and administrative expenditures.

State expenditures allowable for MOE and Federal Matching Funds. State expenditures on any activities or services that meet the goals of the CCDBG Act and that are described in the approved CCDF Plan, if appropriate, may be used to meet the MOE requirement or may be claimed for Federal Matching Funds (proposed §§ 98.53(c)(2) and (b)(2)). For MOE, these proposed regulations offer greater flexibility than we offered in our interim guidance provided in our Program Instruction, ACYF–PI–CC–96–17, dated October 30, 1996. However, as provided at § 98.53(d), the same expenditure still may not be counted for both MOE and match purposes.

Under the regulations we propose, States will have flexibility to define child care services, so long as those services meet the requirements of the statute. For example, State expenditures for child care for those populations previously served by the title IV–A or CCDBG child care programs would be eligible for Federal match. Similarly, State investments in child care through the use of State funds to expand Head Start programs or to otherwise enhance the quality or comprehensiveness of full-day/full-year child care would also be eligible for Federal Matching funds since these activities meet the goals of the Act.

Sections 98.53(e) and (f) contain additional qualifications on what constitutes an expenditure in the State for purposes of this Part. These qualifications are the same that generally apply to Federal programs that provide for matching State expenditures, with two important clarifications.

First, the proposed § 98.53(e)(1)(i) would allow public agencies, other than the Lead Agency, to certify their expenditures as eligible for Federal match. This provision allows States, for example, to use pre-kindergarten (pre-K) expenditures to meet the MOE requirement (when the regulatory provisions for use of pre-K funds are met) and/or receive Federal Matching funds. The second clarification, proposed at § 98.53(f), concerns the treatment of private donated funds. It provides greater flexibility than previously offered as interim guidance under ACF Program Instruction, ACYF–PI–CC–96–17, dated October 30, 1996.

In our consultations we were asked several questions about the relationship between the child care and certain TANF requirements. Regarding the MOE requirements, the same State expenditure may be used to meet both the child care and TANF MOE requirements provided the expenditure meets the requirements of both programs. However, pursuant to section 409(a)(7)(B)(iv) of PRWORA, expenditures which States make as a condition of receiving Federal funds under other programs (e.g., expenditures for which the State receives CCDF Matching Funds) may not be included as part of the State MOE for TANF. ACF's Office of Family Assistance issued preliminary guidance concerning these questions in their policy announcement dated January 31, 1997 (TANF–ACF–PA–97–1). Since these questions relate to the TANF provisions of PRWORA no regulations are proposed for Parts 98 or 99.

Use of private agencies to receive donated funds. Historically, private donations to State-level programs have been very limited; locally controlled donations have been somewhat more prevalent. Frequently cited reasons for this lack of public support for seemingly worthwhile programs have included suspicion of government, in general, especially government outside the immediate community, coupled with regulations that appeared to limit the State's ability to assure the donor that the donated funds will be used in a specific area or for the donor's intended purpose.

At a time when child care programs face increased demands, and State budgets face constraints, we realize that we must reexamine prior ACF policies on donated funds. We have tried to respond to the issues that we were told have inhibited private donations in the past by proposing to include in the definition of State expenditures donated funds that meet the qualifications at § 98.53(e)(2) even though they are not under direct State control. At § 98.53(f) we have added that private donated funds need not be transferred to or under the administrative control of the Lead Agency to be eligible for Federal match. Instead they may be donated to an entity designated by the State to receive donated funds. Both the Lead Agency and the donor must, however, certify that the donated funds are available and eligible for Federal match. In addition to this dual certification requirement, we want to ensure Lead Agency accountability for funds that may not be under its direct control. Therefore, we also propose that the Lead Agency separately report the amount of private donated funds it claims as match. And finally, Lead Agencies should be aware that private donated funds claimed as match are also subject to the audit requirements at § 98.65.

This proposed rule will allow Lead Agencies to cooperate more closely with various organizations, foundations, and associations that already support high quality child care and related activities. It will also allow the Lead Agency to leverage private funds in order to serve more families, while working within State and Federal budget restrictions.

We also take this opportunity to clarify the regulation at § 98.53(e)(2)(i) which requires that private funds be donated without restriction on their use for a specified individual, organization, facility or institution. Under this clarification a donor could designate a specific geographic location for the receipt of funds. Such a geographic specification can be broad, such as within the limits of a specific city, or

extremely narrow, such as a single neighborhood. Such geographic specification is possible whenever funds are donated, whether the funds are donated to the Lead Agency or to an entity specially designated to receive private donations.

Lead Agencies will be asked to identify those entities that are designated to receive private donated funds and the purposes for which those donated funds are expended in their Plan, pursuant to § 98.16(c)(2).

Claims for pre-K expenditures for MOE and match purposes. Many States fund pre-K programs for young children. These are important early childhood services that contribute to school readiness. Expenditures for State-funded public pre-K services to children from families who meet the CCDF eligibility criteria (as outlined in the Plan) may meet the requirements for allowable child care services expenditures for MOE and match purposes. The pre-K program must meet each of the following four conditions:

- Attendance in the pre-K program must not be mandatory.
- The pre-K program must meet applicable standards of State, local or tribal law.
- The pre-K program must allow parental access.
- The pre-K program must not be Federally funded (unless funded with ''exempt'' Federal funds for matching purposes), and its State funding may not be used as basis for claiming other Federal funding.

In addition, the pre-K program must serve families who are at or below 85 percent of the State median income (SMI) (or lower SMI established as the CCDF eligibility criterion by the Lead Agency) and who meet other State eligibility criteria.

During our consultations we heard the full range of issues around allowing States to use their pre-K expenditures to meet the matching and MOE requirements of the CCDF. We came away from those consultations with some reservations about the use of pre-K expenditures, but we also came away with increased respect for the importance of these programs.

A chief concern to working parents is that many pre-K services are only part-day and or part-year and such programs may not serve the family's real needs. Some have expressed concerns that an excessively broad approach to counting pre-K expenditures might result in a real reduction in full-day child care services to potentially eligible working families. The potential exists for a State with a sufficiently large pre-K program to divert all state funds away from other child care programs and fulfill its MOE and Matching requirements solely through pre-K expenditures. On the other hand, allowing pre-K expenditures to be counted toward MOE or match could provide a critical incentive for States to more closely link their pre-K and child care systems. This could result in a coordinated system that would better meet the needs of working families for full-day/full-year services that prepare children to enter school ready to learn. We struggled with these issues and considered various alternative approaches to counting pre-K expenditures in the CCDF.

In the end, we decided on a policy that attempts to balance concerns about the use of pre-K expenditures in meeting CCDF requirements. At § 98.53(h) (3) and (4) we have addressed our concerns about balance by proposing a maximum amount of State expenditures for pre-K services that can be claimed for match or MOE. Expenditures for pre-K programs may constitute no more than 20% of the State's expenditures which are matched. Similarly, expenditures for pre-K programs may constitute no more than 20% of the State's expenditures counted in fulfilling the MOE requirement. However, if a State intends to exceed 10% of either its MOE or matching requirements with pre-K expenditures, its CCDF plan, which is subject to approval, must reflect that intent. Additionally, if a State intends to exceed 10% of either MOE or matching with pre-K expenditures, the CCDF plan must describe how the State will coordinate its pre-K and child care services to expand the availability of child care. We propose the 20% limits because they approximate the proportion of pre-school age children nationwide currently receiving services under the CCDBG. (This level also approximates the average monthly proportion of pre-school age children of JOBS participants who received child care assistance in the past.)

States may count only those pre-K expenditures that meet the criteria as allowable child care services explained above (i.e., attendance is not mandatory, the program meets applicable standards, allows parental access, serves CCDF eligible families as provided in the Plan, etc.). We also intend to require the Lead Agency, using financial forms to be proposed later, to separately report the amount of pre-K expenditures it claims as match or uses to meet the MOE requirement.

In addition, for MOE purposes, we propose at § 98.53(h)(1) that States cannot reduce their level of effort in full-day/full-year child care services if they use pre-K expenditures to meet the MOE requirement. And, States will be required to provide an assurance of this, pursuant to § 98.15(a)(6). Our proposal reflects the fact that although the statute eliminated the non-supplantation requirement formerly found at section 658E(c)(2)(J) of the CCDBG Act, another non-supplantation requirement was created by section 418(a)(2)(C) of the Social Security Act. That non-supplantation requirement—the MOE requirement—requires States to continue to spend at least the same amount on child care services that they spent on the repealed title IV–A child care programs, in order to receive the new Matching Fund. Such a provision would be meaningless if States used MOE expenditures for services that were not responsive to the real child care needs of working families that the CCDF was intended to assist, i.e., the State ''buys out'' with pre-K expenditures the full-day/full year child care services it previously provided under title IV–A. In the interest of State flexibility we have not otherwise regulated on the types of services that may be counted in meeting the MOE requirement and, as discussed below, have eased the burden on the State in calculating the amount of pre-K expenditures that may be used to meet the MOE and matching requirements.

In contrast, we have not proposed a similar requirement if pre-K expenditures are claimed for match. We view the Matching Fund, since it is ''new money,'' as not subject to the same requirements as expenditures that are used to meet a non-supplantation requirement. However, we are proposing at §§ 98.53(h)(2) and 98.16(q) that States describe in their CCDF Plan any efforts they will undertake to ensure that pre-K programs meet the needs of working parents if pre-K expenditures are claimed for match. Our different treatment of pre-K expenditures in the MOE and matching requirements, then, reflects a balance between the principles of non-supplantation and state flexibility.

Furthermore, ACF will permit States to use a different method for calculating the amount of pre-K services claimed for both MOE and matching purposes than was required under the former title IV–A child care programs. Under the now repealed title IV–A child care programs, ACF required States wishing to claim Federal match for their pre-K expenditures to base their claim on the number of title IV–A-eligible (or potentially eligible) children who actually participated in the pre-K program. As many school districts did not have the information to identify

whether pre-K participants were members of IV–A-eligible families, it was difficult for States to claim Federal matching funds for these programs. In fact, only a handful of States claimed Federal Match under title IV–A for their pre-K expenditures. In our consultations we were asked to loosen this child-by-child approach to counting pre-K expenditures.

In the interest of easing administrative burdens on the Lead Agency, we will adopt the following policy toward calculating pre-K expenditures for purposes of claiming MOE and Matching funds. For pre-K expenditures to be claimed, States must ensure that children receiving pre-K services meet the eligibility requirements established in the CCDF plan. In cases where States do not have exact information, however, they must develop a sound methodology for estimating the percentage of children served in the pre-K program who are CCDF-eligible. Expenditure claims must reflect these estimates.

Although the methodology should be documented, we will not require that the methodology be submitted to ACF for prior review or approval. In documenting their methodology, Lead Agencies are reminded of the requirement at § 98.67(c), which provides that fiscal control and accounting procedures must be sufficient to permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the Act or regulations.

We specifically request comments on the amounts of pre-K expenditures that may be counted in meeting CCDF requirements and the basis for placing limits on such expenditures. While we have eased policies regarding calculating the amounts of pre-K funds used for MOE and matching, we have also capped the amounts that can be used for each purpose. We have no historical base for predicting the impact that the relaxed calculation requirements will have on the availability of child care services. Therefore we are soliciting broad public comment on our proposed approach to striking a balance of child care services that are used for CCDF MOE and match. We especially want comments on: (1) The 20% maximum on both funds; (2) the interplay between the relaxation of the methodology for calculating the amounts and the cap; (3) the impact of the proposed pre-K policy on both parental choice and the overall goals and purposes of the CCDF; and (4) the proposed requirement for notification in the CCDF plan if a State intends to use pre-K expenditures in excess of 10%.

Family fees and the Matching Fund. Section 98.53(g)(2) clarifies that family contributions to the cost of care as required by § 98.42 are not considered eligible State expenditures under this subpart. This policy is based on the fact that family fees are not State expenditures.

Restrictions on Use of Funds (Section 98.54)

Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the three title IV–A child care programs—the AFDC child care program, the Transitional Child Care program and the At-Risk Child Care program. However, in appropriating new child care funds under section 418 of the Social Security Act, the PRWORA provides that these funds must be spent in accordance with the provisions of the Child Care and Development Block Grant Act as amended. This requirement is incorporated into § 98.54(a). This section also provides that TANF funds that are transferred to the Lead Agency under the provision of the new section 404(d) of the Social Security Act are treated as Discretionary Funds for the purposes of § 98.60.

Other Federal funds expended for child care, unless transferred to the Lead Agency, are not required to be spent in accordance with the amended CCDBG Act. This means, for example, that child care provided with title XX funds or TANF funds that are not transferred to the Lead Agency might be subject to different requirements. However, ACF cautions States about the administrative and policy problems associated with operating a variety of Federally-funded child care programs, e.g., one program subject to CCDBG requirements and others not. The amendments to the CCDBG Act contained in the PRWORA are intended to create a single child care program with consistent standards and requirements and to counteract the fragmentation and conflicting requirements that had arisen under prior law.

We have also added a new section at § 98.54(b)(3) which clarifies the special provisions on use of funds for construction that apply to Tribes and tribal organizations under the PRWORA amendments.

Subpart G—Financial Management

Availability of Funds (Section 98.60)

Section 418 of the Social Security Act, which was added by PRWORA, requires that all Federal child care funds appropriated therein be spent in accordance with the provisions of the amended Child Care and Development Block Grant. In consolidating the Federal child care programs under a single set of eligibility requirements, Congress nevertheless instituted three funding sources. We have chosen to refer to the combined funding as the Child Care and Development Fund—CCDF. This term recognizes the different sources of Federal monies flowing into child care but the common purposes for which they may be expended.

Section 418 of the Social Security Act appropriates Federal funds for the 50 States, the District of Columbia and Indian Tribes in the form of formula grants which we refer to as the Mandatory Fund. A specified amount of Federal funds is also made available under a different formula to the 50 States and the District of Columbia to match their allowable child care expenditures. We refer to this amount as the Matching Fund. Section 658B of the Child Care and Development Block Grant (CCDBG) Act authorizes funds to States, Tribes and Territories according to a third formula. We refer to the funds authorized under the CCDBG Act as Discretionary Funds. The formulas for allocating each of the Funds and requirements unique to each Fund are discussed at §§ 98.61, 98.62 and 98.63.

Both the Mandatory and Discretionary Funds are 100 percent Federal Funds—no match is required to use these Funds. Section 418(a)(2)(C) of the Social Security Act, however, makes the availability of Matching Funds contingent on a State's child care expenditures.

We have deleted the regulation formerly at § 98.60(g) concerning start-up planning costs associated with the initial implementation of the CCDBG and have redesignated the remaining regulations. All of the States began operating a CCDBG program in FY 1991, therefore the regulation at § 98.60(g) is obsolete since the time frames for obligating and expending start-up funds have passed. We recognize that there still may be Tribes that wish to begin a CCDF program and for which the question of start-up funds still applies. Accordingly, we have addressed the availability of funds for planning purposes for new tribal Lead Agencies at § 98.83(h) in subpart I.

We have also clarified the wording of § 98.60(f) to indicate that 31 CFR part 205 applies only to State Lead Agencies.

Obligation period/liquidation periods. The following table shows the obligation and liquidation periods for the various Funds and the maintenance-of-effort (MOE) requirements.

These funds	Must be obligated by the end of the	And, must be liquidated by the end of the
Discretionary	2nd FY	3rd FY.
Mandatory (State)	1st FY—only if Matching is requested	NA, no limit.
Mandatory (Tribes)	2nd FY	3rd FY.
Matching	1st FY	2nd FY.
MOE	1st FY, and expended in that FY	NA, must be liquidated in 1st FY

The PRWORA amended the CCDBG Act to require States and Territories to obligate their Discretionary allotments in the fiscal year in which they are received, or in the succeeding fiscal year. These amendments return the statutory language to its status before the Juvenile Justice and Delinquency Prevention Amendments of 1992 (Pub. L. 102–586). Since the final regulations which would have incorporated the changes from the Juvenile Justice and Delinquency Prevention Amendments of 1992 were never published, no change is needed in the regulatory language.

The FY 1997 Health and Human Services appropriation (Pub. L. 104–208) changed the date that the CCDF Discretionary Funds will become available from September 30 of the fiscal year in which the funds are appropriated to October 1 of the following fiscal year. As a result, when existing regulatory language is applied, States and Territories have two full fiscal years to obligate their CCDF Discretionary Funds, instead of the year and a day which resulted under earlier appropriations. States and Territories continue to have until the end of the third fiscal year to liquidate these funds.

Section 418(b)(1) of the Social Security Act provides that the Mandatory Fund is available without fiscal year limitation. However, section 418(a)(2)(C) of the Social Security Act, which describes the conditions for receiving Matching Funds, indicates they are paid to a State for expenditures that exceed the State's Mandatory grant and MOE level, and are only available on an annual basis. Moreover, section 418(a)(2)(D) of the Social Security Act requires that Matching Funds that are not used in the fiscal year be made available for redistribution in the following fiscal year. Therefore, we propose that a State wishing to claim Matching Funds must obligate its Mandatory Funds before the end of the fiscal year for which the Mandatory Funds are awarded. States not wishing to claim Federal Matching Funds have no obligation or liquidation deadline for their Mandatory Funds.

Also, the amount of a State's MOE requirement must be obligated and liquidated before the end of the fiscal year for which Matching Funds are awarded. Non-Federal expenditures (exceeding the MOE threshold) for which the State wishes to claim monies from the Matching Fund must also be obligated before the end of the fiscal year for which they are awarded.

For the tribal funds, we have proposed the same obligation and liquidation periods that apply to the State Discretionary Funds. While the FY 1997 appropriation changed the date Discretionary Funds become available, under the revision Tribes will continue to have two full years to obligate the child care funds they receive. Further, under these proposed changes, Tribes will receive an additional year to liquidate these Funds. Retaining current regulations would have had the consequence of providing three full years to obligate and liquidate tribal child care grants.

The amendments to the Discretionary Fund under PRWORA for the first time provide that tribal funds are subject to reallotment. The two-year approach to obligation will encourage Tribes to plan for the timely commitment of funds and, at the same time, make uncommitted funds available on a timely basis to those Tribes that are in need of additional child care monies.

Section 98.60(d)(3) lists the obligation and liquidation periods for States that receive Matching Funds. In order to accommodate the redistribution required by section 418(a)(2)(D) of the Social Security Act, the regulation requires that Matching Funds must be obligated in the fiscal year in which they are granted and liquidated within two years.

Returned funds. We propose to amend the regulation formerly at § 98.60(h)—now (g)—concerning the treatment of returned funds. As a result of the changes made by PRWORA and the change in the date of availability of the CCDF Discretionary Funds made by the FY 1997 HHS appropriation, we are proposing that funds returned to the Lead Agency after the end of the applicable obligation period must be returned to the Federal government. Under this proposed revision, however, and as previous regulations permitted, funds returned during the obligation period may be re-obligated for activities specified in the Plan, provided they are obligated by the end of the obligation period. The re-obligation of funds will not result in any extension of the obligation period.

The initial CCDBG regulations allowed States to follow State or local law or procedures regarding funds returned after the end of the obligation period. The provision was applicable only to what now are the Discretionary Funds part of the CCDF. It recognized that although section 685J(c) of the Act provided for a two-year obligation period for those funds, the Departments of Labor, Health and Human Services and Related Agencies Appropriations Act, 1991 (Pub. Law 101–517) provided that FY 1991 funds became available on September 7, 1991. The impact of that appropriation was that CCDBG funds (now called Discretionary Funds) were available for obligation only for barely over a year, instead of for two full years. The provision regarding returned funds at former § 98.60(h) reflected ACF's desire that States not be put in the position of having to make premature decisions regarding obligations in a new program due to a truncated obligation period. Also, our reasoning for the former provision included the consideration that, even though the Act contained a reallotment provision for these funds, there appeared to be little likelihood that the States would return them for redistribution since they were 100 percent Federal funds.

The FY 1992 HHS appropriation (Pub. Law 102–170) moved the availability of CCDBG funds to the last day of the fiscal year, and the CCDBG funds continued to be paid on the last day of the fiscal year in subsequent years, until the Departments of Labor, Health and Human Services and Related Agencies Appropriations Act, 1997 (Pub. L. 104–208) again changed the date of the availability of these funds. The 1997 appropriation provides that, starting with the FY 1998 Discretionary Funds, Discretionary Funds will be made available on the first day of each fiscal year. The result of this change is that there now will be two full years to obligate Discretionary Funds.

Further, the regulations at the former § 98.60(h) would have been inappropriate to the new Mandatory and

Matching Funds provided under PRWORA. The law, at section 418 of the Social Security Act, requires redistribution of the Matching Funds to other States, if the State to which they were granted does not use them in the fiscal year in which they are granted. Also, the Secretary must determine the amount of Matching Funds available for redistribution by the end of the first quarter of the fiscal year following the year the grant was awarded. The law links use of Matching Funds to use of the Mandatory Funds—and, as provided in the regulations at § 98.60, Mandatory Funds must be obligated in the year in which they are granted if a State requests Matching Funds. Unlike the Discretionary and Mandatory Funds, the Matching Funds are not 100 percent Federal funds, and there seems to be a greater possibility that some of these funds would be returned for redistribution. Thus, the former returned funds regulations would not have been workable for these funds.

Allotments From the Discretionary Fund (Section 98.61)

The allotment formulas for the CCDBG, which we now refer to as the Discretionary Fund, are essentially unchanged. We made only minor wording changes to the regulations to reflect the existence of other funding sources. We also deleted the Trust Territory of the Pacific Islands (Palau) from the formula for allotting funds to the Territories, to reflect an amendment to section 658P(13) of the CCDBG Act.

In response to an amendment to section 658P(14) of the CCDBG Act, we have added a provision allowing for Discretionary Fund grants to a Native Hawaiian Organization and to a private nonprofit organization established for the purpose of serving Indian or Native Hawaiian youth. This provision is discussed below.

ACF has also reconsidered its policy regarding the data sources for allotting Discretionary Funds to Tribes. This policy also impacts the allocation of Tribal Mandatory Funds; and we discuss that policy below.

Data sources. On October 25, 1996 (51 FR 55305), ACF proposed a self-certification process for tribal child counts used to calculate tribal allotments under the Child Care and Development Block Grant. The purpose of utilizing a self-certification process for tribal grantees is to assist ACF in fulfilling its mandate to serve low-income Indian children through the CCDF.

The CCDBG statute requires the Secretary to obtain the most recent data and information necessary, from each appropriate Federal agency, to determine State funding allotments. There is no similar statutory requirement for determining tribal allotments.

The preamble to the current regulations for the CCDBG program stated that the BIA Indian Service Population and Labor Force Estimates Report, published biennially, was determined to be the most suitable, available data source for CCDBG purposes. However, problems have developed in its use. For example, the fiscal year (FY) 1997 CCDF Tribal Mandatory Fund allotments were based on 1993 data since the scheduled 1995 Report had not yet been published.

In addition, the BIA Report is limited because it does not include Alaska-specific data. Consequently, ACF uses Census data to determine CCDBG allotments for Alaskan tribal grantees. Thus, for purposes of CCDBG allocations, child count data are currently collected from two separate data sources which are not compatible with respect to timing or types of information collected.

After a thorough review of the available data options, ACF has determined that it would be in the best interest of the Tribes, as well as ACF, to utilize a self-certification process since this would afford Tribes the opportunity to select a data source, or utilize a method for counting tribal children, which most accurately reflects its child population.

Further, through a tribal self-certification process, the child count data will be available with minimal lag time and will more accurately reflect the natural fluctuations in child population. With current national sources, it can take 2 to 3 years for changes in population (such as reaching a child population of 50) to be reflected.

This approach supports the President's April 29, 1994, mandate to Federal agencies reaffirming the government-to-government relationship between Tribes and the Federal government and directing agencies to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

ACF will issue instructions for Tribes to follow in submitting their self-certified child counts. Each tribal grantee and each Tribe participating in a consortium will be required to submit a declaration signed by the governing body of the Tribe or an individual authorized to act on behalf of the applicant Tribe or organization. For FY 1998 funds the declaration must certify the number of Indian children under age 16 who reside on or near the reservation or other tribal service area in the Tribe's most recent count. Beginning with funding that becomes available in FY 1999, tribal child count declarations will include only children under age 13, in accordance with the CCDBG statute. We have allowed self-certified counts for FY 1998 to be based on the number of children under age 16 since previous data sources included children under age 16. This allows a one-year transitional period for tribal Lead Agencies to plan for a self-certified child count of children under age 13.

Grants to a Native Hawaiian Organization and a Private Nonprofit Organization Serving Indian or Native Hawaiian Youth

Section 658P(14) of the amended CCDBG Act adds the following second definition to the term ''tribal organization'' which are potentially eligible for Discretionary Funds:

> Other organizations—Such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

Section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 defines a Native Hawaiian Organization as:

> A private nonprofit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

No other changes were made in the Act with respect to Native Hawaiians or Native Hawaiian Organizations (NHOs) or private nonprofit organizations (PNOs) established for the purpose of serving youth who are Indians or Native Hawaiians; nor is the Conference Agreement instructive as to Congressional intent. However, given the statutory language, we propose at § 98.61(e) that only a single NHO and a single PNO will be funded.

Several options were considered for allocating funds in accordance with this expanded definition of tribal organization. We considered, for example, treating NHOs and PNOs in the same manner for allocation purposes as other tribal organizations (i.e., a base amount plus a per child amount, or only a per child amount).

Based on an analysis of the statute, however, we believe the Congress intended for a NHO and a PNO to be

treated differently from Indian Tribes and tribal organizations which are eligible to receive CCDF funding. CCDF funds are awarded on a formula basis to all eligible Tribes and consortia. However, only a single NHO and a single PNO are to be awarded grants. Determination of those entities requires a discretionary grant process rather than the formula basis used for Indian Tribes and tribal consortia.

Eligible NHOs and PNOs, as well as the States, are reminded that under § 98.80(d), Indian children continue to have dual eligibility to receive services funded by CCDF. Indian children and Native Hawaiian children will continue to be eligible for services provided under a grant awarded to a NHO or PNO and from the State of Hawaii (or other State in the case of a PNO awarded to a grantee not located in Hawaii).

Therefore, through a grant award to a NHO and a PNO, additional child care services (from the Discretionary Fund) will be made available to children who are currently eligible to be served under a State CCDF program. A more detailed explanation of dual eligibility is provided in the Preamble at Subpart I.

For these reasons, up to $2 million will be reserved from the total amount reserved for Tribes under the Discretionary Fund for two grants. We believe that such an amount is substantial enough to meaningfully serve populations that may have been under-served in the past, without jeopardizing existing tribal programs. In choosing to award these grants on a competitive basis, we are seeking comments about the selection criteria that the Secretary should establish pursuant to § 98.61(e) and the funding amounts which should be reserved for this purpose.

Allotments From the Mandatory Fund (Section 98.62)

Section 418(a) of the Social Security Act creates a capped entitlement for the 50 States and the District of Columbia. The amounts allotted to each State and the District are based on the Federal share of expenditures for child care under prior programs under title IV–A of the Social Security Act (i.e., the AFDC/JOBS, Transitional and At-Risk Child Care programs) in FY 1994, FY 1995, or the average of FY 1992–1994, whichever is greatest. Before funds are allocated to the individual States, one-quarter of one percent of the total is reserved for the provision of technical assistance and up to two percent is reserved for grants to Tribes.

For Indian Tribes and tribal organizations we have chosen to allocate Mandatory Funds solely according to the number of children in each Tribe. That is, unlike the Discretionary Fund, there is no base amount provided to Tribes under the Mandatory Fund.

We propose this approach in response to tribal arguments for increased funding for direct services. We agree that tribal child care programs would especially benefit from additional service funds, and we did not wish to divert any new funds into non-service activities. Tribes have the flexibility to expend their base amount on administration or direct services, including quality activities. However, we are concerned that many large consortia already receive substantial sums of base amount monies. According to the program reports from those consortia, it appears that these large base amounts often do not translate into direct child care services for tribal children. We do not believe that tribal children would benefit from augmenting the existing base amount in lieu of direct child care services.

Lastly, we listed the 13 entities in Alaska that are eligible to receive Mandatory Funds pursuant to the amended section 419(4)(B) of the Social Security Act. We listed those eligible entities in this section of the regulation rather than have two different definitions of Tribes at § 98.2.

Allotments From the Matching Fund (Section 98.63)

As provided in the statute, allotments to each of the 50 States and the District of Columbia are based on the formula used to distribute funds under the now-repealed At-Risk child care program. The Matching Fund consists of the amount remaining from a fiscal year's appropriation under section 418(a)(3) of the Social Security Act after reserving amounts for technical assistance and for Tribes and awarding Mandatory Funds.

Reallotment and Redistribution of Funds (Section 98.64 of the Proposed Regulations)

This section formerly addressed financial reporting requirements. We have deleted those requirements since they refer to forms, the SF 269 and SF 269A, which ACF has proposed to replace. The proposed replacement form, the ACF 696, will better reflect the unique nature of the CCDF. Financial reporting instructions for the new form will be issued separately following approval by OMB. A general financial reporting requirement has been reincorporated as a new § 98.65(g).

Section 418(a)(2)(D) of the Social Security Act provides for the redistribution of Federal Matching Funds which are granted to a State, but not used. This provision is added to the regulations at § 98.64(c)(1). We have adopted the statutory term ''redistribute'' when discussing the Matching Fund in the regulation. However, we believe that the term is comparable to the ''reallotment'' term used for redistribution of the Discretionary Funds and have therefore adopted a comparable process. For example, at § 98.64(c)(3) we have applied the language from the reallotment process at § 98.64(b)(2) to describe the same limits on the amounts of unobligated Matching grants that will be redistributed to other States that currently apply to the Discretionary Fund. That is, no redistribution will be made if the total to be redistributed is less than $25,000. Nor will any grant be made to an individual State if it would be less than $500. As provided in the statute, redistribution of the Matching Funds will be based on a formula similar to that used for the original allotments to the 50 States and the District of Columbia.

At § 98.64(c)(1) we have proposed that Matching Funds granted to a State, but not obligated by the end of that fiscal year, be redistributed to the other States which did obligate all of the Matching Funds allocated to them. Unused Matching Funds, then, would be made available only to those States which demonstrated their ability to use the entire amount already granted to them. According to the statute, such States must request the redistributed funds; the Funds will not automatically be redistributed to all qualifying States. We considered redistributing unused Matching Funds among each of the 50 States and the District of Columbia, including the States that returned the money being reallotted. We rejected that approach since it raised the possibility that States which were unable to use all of their funds in one year would again be unable to use them in the following year. This would result in funds reverting to the Federal Treasury rather than being used to assist families.

The regulation at § 98.64(c)(2) restates the statutory language that funds which are not granted to a State are not redistributed. That is, if a State applies for only a portion of its allotment of the Matching Fund only that amount will be granted. The difference between the amount granted to that State and the State's allotment reverts to the Treasury and is not redistributed. As discussed above, it is the difference between the amount of the State's grant of Matching Funds—not the amount allotted for it—and the amount that is not obligated within the required time frame, that will

be redistributed to the other States. This regulation is based on the statutory language that provides that it is the amounts that remain unused ''under any grant awarded'' that are redistributed, not the amounts that might be available to the State but are not awarded.

We have also proposed a simplified process by which States notify us of any unobligated Matching Funds available for redistribution. Similarly, although we decided not to automatically redistribute Matching Funds among all eligible States, we propose a simple process for them to request redistributed Matching Funds. At § 98.64(c) (3) and (4) we propose that States use the regular financial reporting form, rather than requiring a separate, additional notification from the State.

Section 98.64(c)(6) reflects the statutory language that redistributed Matching Funds are to be considered as part of the grant for the fiscal year in which the redistribution occurs, not as a part of the grant for the year in which the funds were first awarded. This is in contrast to reallotment of Discretionary Funds; for Discretionary Funds the obligation period is based on the award year and is not extended.

An amendment to section 658O of the Act provides for the reallotment of tribal Discretionary Funds. That amendment, at 658O(e)(4), requires the Secretary to reallot any portion of a tribal grant that she determines ''is not being used in a manner consistent with the provision of [the Act].''

Although the statutory language seems to suggest that the Secretary may make a determination which is separate and apart from the usual audit practice on the manner of use of funds by Tribes, there is no discussion in the Conference Agreement to indicate such an interpretation. Furthermore, we believe that Congress would have been more explicit if it desired the Secretary to create a separate audit or investigatory process. Therefore, we have proposed at § 98.64(d) a reallotment process that exactly parallels the State process. That is, we will determine the amounts to be reallotted based upon reports submitted by the Tribes, pursuant to paragraph (d)(1) of this section. Each Tribe must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate timely pursuant to § 98.64(d), or that it will obligate all funds in a timely manner. These reallotment reports, which must be submitted by April 1 of each year, may be in the form of a letter. We chose the April 1st deadline to allow the Secretary the necessary time to reallot the funds and to allow Tribes the necessary time to obligate such funds on a timely basis.

We will reallot funds that Tribes indicate are available for reallotment to the other Tribes, in proportion to their original allotment, if the total amount available for reallotment is $25,000 or more. If the total amount is less than $25,000, we will not reallot these funds; instead, they will revert to the Federal treasury. It is administratively impractical for the Department to issue small awards. Likewise, the Secretary will not award any reallotted funds to a Tribe if its individual grant award is less than $500, as it is administratively impractical to do so. These are the same thresholds that apply to the States.

If a Tribe does not submit a reallotment report by the deadline for report submittal, we will determine that the Lead Agency does not have any funds available for purposes of the reallotment. If a report is postmarked after April 1, we will not reallot the amount of funds reported to be available for reallotment; instead, such funds will revert to the Federal treasury. As previously discussed, late reports do not allow the Secretary sufficient time to reallot the funds nor do they allow the Tribes sufficient time to obligate such funds timely as required by § 98.64(d). We anticipate the Secretary will reallot funds made available for reallotment by May 1. Reallotted funds must meet the same programmatic and financial requirements as funds made available to Tribes in their initial allotments.

The statute, and hence the regulations, remain unchanged regarding the reallotment of Discretionary Funds to the Territories. That is, there is no reallotment of Territorial Discretionary Funds.

Audits and Financial Reporting (Section 98.65)

At § 98.65(a) we have clarified that the Single Audit Act, as well as OMB Circular A–128, provide the basis for the required audits.

We also added a new § 98.65(f) to the requirements for audits. Audits must now be conducted by an agency that is independent of the State, Territory or Tribe as required by the amended section 658K of the CCDBG Act.

We recognize that in the past some States may have used a State audit agency that is independent of the Lead Agency. Such audit agencies do not meet the new requirement because they are, nevertheless, part of State government. The Lead Agency is reminded that the costs of audits are an allowable administrative expense.

Although we could not envision another regulatory approach that would give meaning to the change Congress made in the Act, we still welcome focused comments on this provision.

Finally, we reincorporated from the former § 98.64 a general financial reporting requirement. This provision is at § 98.65(g). Accordingly we have renamed this section to ''Audits and Financial Reporting.''

Subpart H—Program Reporting Requirements

Reporting Requirements (98.70 of the Regulations)

Section 658K(a) of the amended Act requires each State receiving Child Care and Development Fund funding to submit two reports: quarterly disaggregate data for family units and biannual aggregate data. Territories are considered States for reporting purposes. The first biannual aggregate report must be submitted by December 31, 1997, and every six months thereafter.

Section 658L of the Act requires the Secretary to summarize biennially for Congress the data and information required at section 658K of the Act and § 98.71 of the regulation.

Section 658O(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under CCDF. We require Tribes to submit annual aggregate data appropriate to tribal programs as they have previously in the CCDBG program.

Principles for data reporting. The amended Act significantly revised the reporting requirements for all child care services. As a result, ACF developed principles to guide the implementation of reporting requirements. ACF, in concert with the Lead Agencies, will:

1. Meet the statutory mandate for data reporting;
2. Streamline data collection and reporting procedures from the previous four programs into a single integrated program;
3. Build on data collection systems from the former four child care programs;
4. Apply flexibility in phasing in the implementation of the data collection requirements;
5. Apply flexibility in meeting data needs outside the Federal requirements;
6. Provide technical assistance to Lead Agencies in the design of new or revised data collection systems and reporting processes, encouraging linkages to TANF information systems and to other relevant Federal reporting systems;
7. Provide sampling specifications to Lead Agencies as part of the data collection process;

8. Provide technical assistance to Lead Agencies in the design and use of data for the development of program performance measures; and

9. Commit to making the data useful for Lead Agencies.

Content of the Reports (Section 98.71)

For States and Territories. Consistent with the requirements of section 658K of the amended Act, we require States to collect monthly samples of family unit disaggregated data which are reported to ACF quarterly. In order to provide for adequate time for the approval process for sampling plans, we are proposing at § 98.70(a)(3) that States be required to submit their sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not precluded from submitting disaggregate data for the entire population of children served under the CCDF. Specific aggregate information is required in the biannual report.

We are proposing to use the Social Security Number of the head of the family unit receiving child care assistance as the case identifier. This would facilitate the use of the data for research tied to TANF, employment, and other family- and child-related programs. Public comment on this issue is specifically invited.

Although the statute requires that cost of care information be provided in both the disaggregate and aggregate reports (658K(a)(1)(B)(ix) and 658K(a)(2)(B)), we will collect this information through the disaggregate report only and we will compile the information into the aggregate. This will eliminate duplicative reporting for the biannual aggregate report. Public comment on this issue is specifically invited.

The statute at 658K(a)(1)(B)(x) requires collection of the average hours per week of care. In consultation with the States, we learned that it would be less burdensome to report the total hours of service per month. We therefore propose to collect the total hours of care per month in lieu of the average hours per week. We will be able to calculate the average hours of service per week based on this number.

We propose to continue a data element concerning the reasons care was provided. In previous CCDBG data reports, ACF collected the reasons for care, i.e. working, education/training, and protective services. This is valuable information for State and Federal planning efforts.

The statute at 658K(a)(2)(C) requires that the number of payments made through various methods by type of provider be reported biannually. Most States pay providers monthly; a few pay more frequently. If the statutory language is strictly interpreted, States would be required to report as many as 12–24 payments or more for each subsidized child throughout the year. Because this information would be of limited value, we are proposing at § 98.71(b)(2) that the Lead Agency's report reflect the number of children served by payment method and primary type of provider during the final month of the report period only (or for the last month of service for those children leaving the program before the end of the report period). Changes in payment method or primary provider type over the report period should be ignored and only the last arrangement reported.

Information concerning child care disregards is required by the statute at 658K(a)(2)(C); however, disregards, if used, would be provided under the TANF programs, not child care programs. As a result, information on the use of the disregard will be collected through TANF reporting procedures, since TANF agencies can collect this information more reliably.

To have a complete picture of child care services in the States, quarterly disaggregate and biannual aggregate information will be collected on all funds of the Child Care and Development Fund, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds and State Matching and MOE Funds. For States that choose to pool CCDF funds with non-CCDF funds (e.g. title XX, or State or local funds not part of the CCDF MOE) we will allow reporting and/or sampling on all children served by the pooled funds, but will require States to indicate percentages of CCDF and non-CCDF funds in the pool of funds. Detailed instructions on how to construct sampling frames for States which pool funds will be included in the sampling specifications developed by ACF. Technical assistance will be provided to States regarding collecting data across funding streams.

Additionally, States have indicated a desire to compare data which are not a part of the mandatory reporting requirements. To meet this need and to make the available child care data more useful to State planning efforts, the Department will collaborate with States regarding a set of standardized optional data elements. The reporting of these data elements will not be required of any grantee.

We will send additional information to Lead Agencies concerning specific reporting requirements, sampling specifications for the quarterly disaggregate report, and the submission process. We will issue detailed instructions in the future, including approved data definitions and reporting formats. Before we issue such instructions, however, we will solicit additional comments and secure necessary OMB approval.

For Tribes. Tribes are neither required to submit the new aggregate biannual report nor the new disaggregate quarterly report. Instead, Tribes will continue to annually submit the ACF–700 which is currently in use. They will include information on all children served under the Discretionary and Tribal Mandatory funds. As of fiscal year 2000, Tribes will no longer be required to submit the second page of the ACF–700 (fiscal programmatic data), as fiscal information for Tribes will be collected on a separate tribal financial reporting form.

Subpart I—Indian Tribes

Subpart I addresses requirements and procedures for Indian Tribes and tribal organizations applying for or receiving CCDF funds. In light of unique tribal circumstances, Subpart I balances flexibility for Tribes with the need to ensure accountability and quality child care for children.

Subpart I specifies the extent to which general regulatory requirements apply to Tribes. In accordance with § 98.80(a), a Tribe shall be subject to all regulatory requirements in Parts 98 and 99, unless otherwise indicated. Subpart I lists general regulatory requirements that apply to Tribes. It also identifies requirements that do not apply to Tribes.

Most programmatic issues that apply to Tribes are consolidated in Subpart I. However, financial management issues that apply to Tribes, including the allotment formulas and underlying data sources, are addressed separately in Subpart G—Financial Management.

Tribes have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477). This law permits tribal governments to integrate a number of their federally funded employment, training, and related services programs into a single, coordinated comprehensive program.

Since Senate Committee Report language for that Act prohibits the creation of new regulations for tribal programs operating under the 102–477 initiative (S. Rep. No. 188, 102 Cong. 2d Sess. (1992)), ACF does not propose any additional regulations for the Indian

Employment, Training and Related Services application and plan process. Instead, ACF publishes annual program instructions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training and Related Services plan. The Bureau of Indian Affairs, Department of the Interior, has lead responsibility for administration of Public Law 102–477 programs.

General Procedures and Requirements (Section 98.80)

Demonstrations from consortia. The regulation at § 98.80(c)(1) continues to provide that a consortium must adequately demonstrate that each participating Tribe authorizes the consortium to receive CCDF funds on its behalf. This demonstration would normally be required once every two years through the two-year tribal CCDF Plan. However, it is the responsibility of each consortium to inform ACF, through an amendment to its Plan, of any changes in membership.

Consortia can demonstrate members' agreement to participate in a number of ways. A resolution is acceptable. We will also accept an agreement signed by the tribal leader or evidence that a tribal leader participated in a vote adopting such an agreement.

Special requirements for Alaska Native grantees. By statute (section 419 of the Social Security Act), only specified Alaska Native entities may receive Tribal Mandatory Funds. The Metlakatla Indian Community of the Annette Islands Reserve and the 12 Alaska Native Regional Nonprofit Corporations are eligible to receive Tribal Mandatory Funds. The law provides that Discretionary Funds, however, will continue to be available to all the eligible Alaska Native entities that could apply under old CCDBG rules.

For purposes of Discretionary funding, Alaska Native Regional Nonprofit Corporations, which are eligible to apply on behalf of their constituent villages, would need to demonstrate agreement from each constituent village.

In the absence of such demonstration of agreement from a constituent village, the Corporation would not receive the per-child amount or the base amount associated with that village. This changes the policy stated in the preamble to the final rule issued August 4, 1992 (57 FR 34406). The former policy permitted Alaska Native Regional Nonprofit Corporations to receive the per-child amount (but not the base amount) for a constituent village in the absence of a demonstrated agreement from the village that the Corporation was applying for funding on its behalf. Since all other tribal consortia are required to demonstrate agreement from their member Tribes in order to receive Discretionary funding, this change makes the funding requirements consistent for all consortia grantees.

For purposes of Tribal Mandatory Funds, since the statute specifically cited the 12 Alaska Native Regional Nonprofit Corporations as eligible entities, demonstrations are not required by member villages for these entities to be funded.

Since the law provides that only designated Alaska Native entities may receive the Tribal Mandatory Funds, there is a difference between which Alaska Native entities can be direct grantees for the two tribal parts of the CCDF. Our analysis indicates, however, that each of the Alaska tribal entities that are eligible to receive Discretionary Funds are served by one of the 12 Alaska Native Regional Nonprofit Corporations that by law can be direct grantees for the Tribal Mandatory Funds. In instances where there are different Alaska Native grantees for the two parts of the fund, we strongly encourage grantees to work together to ensure a coordinated tribal child care system in Alaska.

Dual Eligibility. Under § 98.80(d), Indian children continue to have dual eligibility to receive child care services funded by CCDF. Section 658O(c)(5) of the Act asserts that, for child care services funded by CCDF, the eligibility of Indian children for a tribal program does not affect their eligibility for a State program. To receive services under a program, the child must still meet the other specific eligibility criteria of that program.

This provision was in the original Act, and it was not affected by the recent PRWORA amendments. Regulations at § 98.20(b)(1) continue to provide that Lead Agencies may establish eligibility requirements, in addition to Federal eligibility requirements, so long as they do not ''discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability.'' As a result, States cannot have a blanket policy of refusing to provide child care services to Indian children.

At the same time, tribal CCDF programs are a valuable source of child care for Indian children, including children whose families receive TANF assistance. In particular, a Tribe that operates its own TANF or work program (or both) will have an important role in promoting self-sufficiency for its low-income families, including the provision of adequate child care. However, Indian children have dual eligibility for CCDF child care services regardless of whether a Tribe operates its own TANF or work program. Therefore, we encourage States and Tribes to work closely together in planning for child care services. Coordination of child care resources will be needed to ensure adequate child care for eligible Indian children.

Eligibility. Under § 98.80(f), tribal Lead Agencies continue to have the option of using either the State's median income or the tribal median income in determining eligibility for services. However, ''75 percent of median income'' has been replaced with ''85 percent of median income'' to reflect the change to the Act at section 658P(4)(B). As a result, in determining eligibility for services pursuant to § 98.20(a)(2), a tribal program may use either: (1) up to 85 percent of the State median income for a family of the same size; or (2) up to 85 percent of the median income for a family of the same size residing in the area served by the tribal grantee.

Application and Plan Procedures (Section 98.81)

Section 98.81 contains application and Plan requirements for Tribes and tribal consortia. In accordance with § 98.81(a), Tribes must apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

A tribal Lead Agency must submit a CCDF Plan, as described at § 98.16, with the additions and exceptions described in § 98.81(b).

At § 98.81(b)(1), we have proposed a new requirement that Tribes include a tribal resolution or similar demonstration which identifies the tribal Lead Agency. In the past there have been instances where a Tribe has left a consortium and requested direct funding. It was unclear to us whether the request for direct funding was legitimate since the Tribe's resolution to join the consortium was not rescinded. The consortium claimed to represent the Tribe, but the Tribe claimed it did not. Similarly, some tribal members have voiced concerns that an organization could apply for and receive funds on behalf of a Tribe without the Tribe's being aware that funds had been requested.

The proposed requirement is parallel to the requirement that a State's chief executive officer must identify the State Lead Agency. Requiring a tribal resolution to identify the Lead Agency is not burdensome. To the contrary, it raises the profile and importance of

child care services to the Tribe and offers both ACF and the Tribes a measure of protection from erroneous disbursements that does not now exist. We invite comments on this proposed requirement.

Section 98.81(b)(3) requires definitions of ''Indian child'' and ''Indian reservation or tribal service area'' for purposes of determining eligibility.

Section 98.81(b)(5) requires information necessary for determining the number of children for fund allocation purposes and grant eligibility requirements (i.e., the requirement that a Tribe must have at least 50 children under 13 years of age in order to directly apply for funding). The preamble discussion to Subpart G summarizes the data sources used to determine tribal allotments.

Other changes in Plan provisions are more fully discussed in related sections under Subpart I.

Coordination (Section 98.82)

Requirements regarding coordination at § 98.82 remain unchanged except for a proposed clarification that tribal Lead Agencies must also meet coordination requirements at §§ 98.12 and 98.14.

In addition to coordinating with other agencies and programs, tribal Lead Agencies must also meet planning requirements at § 98.14—including the public hearing requirement at § 98.14(c). A Tribe must distribute notice of the hearing throughout its service area (rather than statewide).

Requirements for Tribal Programs (Section 98.83)

In recognition of the unique social and economic circumstances of many tribal communities, we are proposing to exempt tribal Lead Agencies from a number of the CCDF requirements which apply to State Lead Agencies.

Administrative costs. Based on input from several tribal organizations and tribal representatives, we are providing greater flexibility for tribal Lead Agencies by exempting them from the five percent State administrative cost cap at § 98.52(a). Because of the varying infrastructural capabilities of many Indian Tribes, we are proposing to permit tribal Lead Agencies to use up to 15 percent of their total CCDF per child amount (including funds used for construction or major renovation in accordance with § 98.84) for administrative costs. A 15 percent administrative limit for tribal Lead Agencies was recommended by several tribal organizations during the course of our pre-drafting consultations.

Section 98.52(a) provides a list of administrative activities which are subject to the 15 percent cost limitation. The preamble discussion of section 98.52(a) provides an additional list of activities which are not considered administrative activities for purposes of the 15 percent cost cap.

We recognize that many Federal programs permit Indian Tribes and tribal organizations to include an indirect cost rate in their grant awards. This rate is arrived at through negotiation between an Indian Tribe or tribal organization and the appropriate Federal agency. Through the list of activities which are not considered administrative costs, the exemption from the five percent State administrative cost cap, and the base amount under the Discretionary Fund, tribal Lead Agencies will have sufficient flexibility in determining their administrative and/or indirect costs to run effective CCDF programs.

Exempt Tribes. We also realize that many smaller tribal grantees do not have the infrastructure in place to support certain requirements. As a result, we are exempting Lead Agencies of smaller Tribes and tribal organizations (with total CCDF allocations less than an amount established by the Secretary) from certain requirements specified at § 98.83(f). Exempt tribal grantees are not required to comply with the four percent quality requirement at § 98.51(a) or to run a certificate program. Non-exempt tribal grantees are required to comply with these requirements.

The dollar threshold for determining which Tribes are exempt will be established by the Secretary. The threshold will be set to include as non-exempt all Tribes which were non-exempt prior to PRWORA. Some Tribes which were previously exempt may move into the non-exempt category due to the allocation of Tribal Mandatory funding, which does not include a base amount but rather is calculated solely on a per-child basis. Under interim procedures which are in effect until final regulations are issued, all Tribes that were previously exempt (prior to PRWORA) continue to be exempt. However, if the threshold had been set for FY 1997 in accordance with the parameters described above, the amount would have been approximately $460,000 (i.e., tribal Lead Agencies with total CCDF allocations below $460,000 would have been exempt). The threshold for future fiscal years will likely be somewhat different because of changes in the CCDF appropriation. We welcome comments on the criteria for setting the exempt/non-exempt threshold.

Although in the proposed rule we are keeping the existing ''exempt'' and ''non-exempt'' categories, we are requesting comments on whether to eliminate this distinction and have one set of requirements for all tribal Lead Agencies. Under such an approach, all tribal Lead Agencies would be exempt from: the assurance of giving parents the option of enrolling their child with a contracted provider or receiving a certificate (at § 98.15(a)(2); the requirement for certificates (at § 98.30(a) and (d)); and the requirement for minimum quality expenditures at § 98.51(a).

By exempting all Tribes from these requirements, Tribes would be afforded greater flexibility in implementing their CCDF programs. Tribes would have the opportunity to determine their own needs and design program services which more appropriately reflect their unique circumstances.

We strongly encourage Tribes to consider operating certificate programs, as appropriate, since it promotes parental choice. Many exempt Tribes currently operate certificate programs, as well as expend funds for quality activities, even though they are not required to do so by Federal regulation.

70 percent requirement. The new section 418(b)(2) of the Social Security Act provides that States ensure that not less than 70 percent of the total amount of the State Mandatory and Matching funds received in a fiscal year be used to provide child care assistance to families receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition from such assistance, and families at risk of becoming dependent such assistance. The provision at section 418(b)(2) does not apply to tribal Lead Agencies. Nonetheless, Tribes have a responsibility to ensure that their child care services provide a balance in meeting the needs of families listed in section 418(b)(2) and the child care needs of the working poor.

Tribes that apply for grants from the new Tribal Mandatory Fund will have new direct child care resources for providing services, since they will receive substantially increased grants. Also, as we pointed out in our discussion on dual eligibility of tribal children, Tribes now have the option under title IV of the Social Security Act to operate their own TANF programs. Additionally, Tribes that operated a tribal Job Opportunities and Basic Skills Training (JOBS) program in 1994 may choose to continue a tribal work program. Whatever the mixture of child care, TANF, and work services a Tribe

chooses to administer, child care services should be designed to ensure that all eligible families receive a fair share of services within the tribal service area.

Base amount. A base amount is included in tribal grant awards under the Discretionary Fund. As referenced at § 98.83(e), the base amount of any tribal grant is not subject to the administrative costs limitation at § 98.83(g) or the quality expenditure requirement at § 98.51(a).

The base amount for each tribal grant may be used for any activity consistent with the purposes of the CCDF, including the administrative costs of implementing a child care program. For examples of administrative costs, refer to § 98.52(a). While we encourage exempt tribal Lead Agencies to expend CCDF funds on quality activities, they are not required to meet this provision.

Lead agency. Tribal grantees, like States, must designate a Lead Agency to administer the CCDF. If a tribal grantee applies for both Tribal Mandatory Funds and Discretionary funds, the programs must be integrated and administered by the same Lead Agency.

Consortia. If a Tribe participating in a consortium arrangement elects to receive only part of the CCDF (e.g., Discretionary Funds), it may not join a different consortium to receive the other part of the CCDF (Tribal Mandatory Funds), or apply as a direct grantee to receive the other part of the fund. In this situation, individual tribal consortium members must remain with the consortium they have selected for the fiscal year in which they are receiving any part of CCDF funds. (However, an Alaska Native village that must receive Tribal Mandatory Funds indirectly through an Alaska Native Regional Nonprofit Corporation may still apply directly for Discretionary Funds).

We have added language in § 98.83(c) to require that a tribal consortium include in its two-year CCDF Plan a brief description of the direct child care services being provided for each of its participating Tribes. We have included this provision for three reasons: (1) It helps ensure that services are being delivered to the member Tribes; (2) since in some cases consortia receive sizeable base amounts, it will provide documentation of the actual services being delivered to member Tribes through consortia arrangements; and (3) it provides the opportunity for public comment, as part of the public hearing process required by § 98.14(c), on the services provided to member Tribes.

Child care standards. A new section of the Act (section 658E(c)(2)(E)(ii)) requires the development of minimum child care standards for Indian Tribes and tribal organizations. Based on input from tribal leaders and tribal child care administrators, we are developing a process for Tribes to establish minimum child care standards that appropriately reflect tribal needs and available resources. Until the minimum standards are developed, Tribes must have in effect tribal and/or State licensing requirements applicable to child care services pursuant to § 98.40. Tribes must also have in place requirements designed to protect the health and safety of children (in accordance with § 98.41 of the regulations), including, but not limited to: (1) The prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting.

Planning costs for initial plan. Former § 98.60(g) regarding planning costs associated with the submission of an initial CCDF Plan has been revised and moved to § 98.83(h). This provision provides that CCDF funds are available for costs incurred by a tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan. Federal obligation of funds for planning costs is subject to the actual availability of the appropriation.

We propose to move this provision from Subpart G (Financial Management) to Subpart I (Indian Tribes) because it applies only to Tribes. All States and eligible Territories are currently CCDF grantees, but some Tribes are not current grantees and are eligible to submit initial CCDF Plans.

Construction and Renovation (Section 98.84)

Upon requesting and receiving approval from the Secretary of the Department of Health and Human Services, a tribal Lead Agency may use amounts from its CCDF allocation for construction and major renovation of child care facilities (pursuant to new section 6580(c)(6) of the Act and proposed regulations at § 98.84(a)).

Under the proposed rule, these payments could cover costs of amortizing the principal and paying interest on loans for construction and major renovation. This policy is consistent with Head Start procedures for construction and renovation—which allow use of funds to pay for principal and interest on loans. Loans are an essential part of many construction and renovation projects.

Proposed § 98.84(b) reflects the statutory requirement that, to be approved by the Secretary, a request to use CCDF funds for construction or major renovation must be made in accordance with uniform procedures developed by the Secretary. These uniform procedures will be provided to tribal Lead Agencies via program instructions.

By statute (and proposed § 98.84(b)), such requests must demonstrate that: (1) Adequate facilities are not otherwise available to enable the tribal Lead Agency to carry out child care programs; (2) the lack of such facilities will inhibit the operation of child care programs in the future; and (3) the use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the tribal Lead Agency as compared to the level of services provided by the tribal Lead Agency in the preceding fiscal year. In light of the requirement that a Tribe cannot reduce the level of child care services, a tribal Lead Agency should plan in advance for anticipated construction and renovation costs.

Proposed § 98.84(c) allows tribal Lead Agencies to use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation. However, a tribal Lead Agency may not use CCDF funds to pay for the costs of an architect, engineer, or other consultant until its request is approved by the Secretary.

Proposed § 98.84(d) requires tribal Lead Agencies which receive approval from the Secretary to use CCDF funds for construction or major renovation to comply with specified requirements in 45 CFR Part 92 and any additional requirements established by program instruction. Title 45 CFR Part 92 does not generally apply to the Child Care and Development Fund. However, we are proposing to make specified sections applicable for purposes of construction and renovation only.

The ACF has an interest in property that is constructed or renovated with CCDF funds. This interest takes the form of restrictions on use and disposition of the property. The Federal interest also is manifested in the requirement that ACF receive a share of the proceeds from any sale of property. These requirements regarding Federal share and the use and disposition of property are found at 45 CFR 92.31 (b) and (c).

Title requirements at 45 CFR 92.31(a) provide that title to a facility

constructed or renovated with CCDF funds vests with the grantee upon acquisition.

Title 45 CFR 92.22 concerns cost principles and allowable cost requirements. Consistent with these cost principles, reasonable fees and costs associated with and necessary to the construction or renovation of a facility are payable with CCDF funds, but require prior, written approval from ACF.

Title 45 CFR 92.25 governs program income. Program income derived from real property constructed or renovated with CCDF funds must be deducted from the total allowable costs of the budget period in which it was produced.

All facility construction and renovation transactions must comply with the procurement procedures in 45 CFR 92.36, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

Tribal Lead Agencies must also comply with any additional requirements established by program instruction. These requirements may include, but are not limited to, requirements concerning: The recording of a Notice of Federal Interest in property; rights and responsibilities in the event of a grantee's default on a mortgage; insurance and maintenance; submission of plans, specifications, inspection reports, and other legal documents; and modular units.

The proposed definition of ''facility'' at § 98.2 would allow tribal Lead Agencies to use CCDF funds for the construction or renovation of modular units as well as real property. Proposed regulations at § 98.2 would define ''construction'' as the building of a facility that does not currently exist. The proposed rule would define ''major renovation'' as: (1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change. The proposed definitions of ''facility,'' ''construction,'' and ''major renovation'' are the same definitions used in Head Start construction and renovation procedures.

Section 98.84(e) proposes that, in lieu of obligation and liquidation requirements at § 98.60(e), tribal Lead Agencies must liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. This will give tribal Lead Agencies three years to liquidate funds approved by the Secretary for use on construction or major renovation with no separate obligation period. We are proposing these requirements to allow sufficient time for construction and renovation projects. We invite comments on this proposal.

While a tribal Lead Agency must request approval from the Secretary before spending CCDF funds on construction or major renovation, approval is not necessary for minor renovation pursuant to section 658F(b) of the Act and proposed regulations at § 98.84(f). For tribal Lead Agencies, minor renovation includes all renovation other than major renovation or construction.

Amounts used for construction and major renovation are not considered administrative costs for the purpose of the 15 percent administrative cost limit under proposed § 98.83(g). We do not believe that Congress intended for us to unnecessarily limit a tribal Lead Agency's ability to use CCDF funds on construction and renovation projects which meet the requirements necessary for Secretarial approval.

Finally, the new statutory provision allowing tribal construction with CCDF funds provides an opportunity for tribal grantees to leverage resources for quality facilities and services by coordinating with their Tribe's Head Start program.

Subpart J—Monitoring, Non-Compliance and Complaints

Penalties and Sanctions (Section 98.92)

We have amended paragraphs (1) and (2) of § 98.92(a), because the statutory amendments changed the penalty for a Lead Agency found to have failed to substantially comply with the statute, the regulations, or its own Plan. We also have deleted the former § 98.92(b) as redundant due to the statutory amendments. In keeping with prior statutory language, the former regulations authorized the withholding of further payments to a grantee as a penalty for non-compliance. The amendments at section 658I(b)(2)(A)(ii) give the Secretary the option to disallow improperly expended funds or to deduct an amount equal to or less than an improperly expended amount from the administrative portion of the Lead Agency's allotment for the following fiscal year. The Secretary can also impose a penalty that is a combination of these two options.

Paragraph (c), concerning other penalties has been revised and redesignated as paragraph (b) in light of the amended statute. We also propose a new regulation at paragraph (b)(2) to establish a penalty on the Lead Agency for: (1) a failure to implement any part of the CCDF program in accordance with the Act or regulations or its Plan; or (2) a violation of the Act or regulations. Such penalty would be invoked when a failure or violation by the Lead Agency does not result in an clearly identifiable amount of improperly expended funds. For example, the failure to provide the reports required under subpart H or the inappropriate limitation of access to a particular type of provider in violation of the parental choice provisions of Subpart D do not result in a clearly identifiable amount of improperly expended funds. Hence, the penalties at paragraph (a) could not be applied. However, our stewardship of the program since its creation indicates the need for a more effective means of ensuring conformity with the statute and regulations than is offered by the existing regulations. Section 658I(b)(2)(B) of the CCDBG Act provides for an ''additional sanction'' if the Secretary finds there has been non-compliance with the plan or any requirement of the program.

Because a failure or violation which would cause the penalty under (b)(2) to be imposed may not have an amount of improperly expended funds associated with it, we needed to determine what amount of penalty should be imposed. We considered the range of TANF penalties found at section 409 of the Social Security Act and decided to use the TANF penalty provisions for failure to report at section 409(a)(2) of the Social Security Act as guidance. Accordingly, our proposed § 98.92(b)(2) provides that a penalty equal to four percent of the annual Discretionary allotment will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty.

Since the TANF penalties provisions include provisions for good cause and corrective action, we have proposed to include similar provisions in § 98.92(b)(2). The penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is accepted by the Secretary. Waiting at least one full quarter before applying the penalty provides sufficient time to remedy the situations which we envision would cause the penalty to be invoked. The Lead Agency may, during that time, show cause to the Secretary why the amount of the penalty, if imposed, should be reduced. We are especially

seeking comments on the penalty option proposed at § 98.92(b)(2).

The paragraphs formerly located at § 98.92 (d) and (e) are relocated at § 98.92 (c) and (d), respectively. We have added a new § 98.92(e) providing that it is at the Secretary's sole discretion to choose the penalty to be imposed.

List of Subjects

45 CFR Part 98

Child care, Grant program—social programs, Parental choice, Reporting and record keeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program—social programs.

(Catalog of Federal Domestic Assistance Programs: 93.037, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: March 7, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

Approved: April 21, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, Parts 98 and 99 of Subtitle A of Title 45 of the Code of Federal Regulations are proposed to be amended as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

1. Part 98 is proposed to be revised as follows:

Subpart A—Goals, Purposes and Definitions

Sec.
98.1 Goals and purposes.
98.2 Definitions.
98.3 Effect on State law.

Subpart B—General Application Procedures

98.10 Lead Agency responsibilities.
98.11 Administration under contracts and agreements.
98.12 Coordination and consultation.
98.13 Applying for funds.
98.14 Plan process.
98.15 Assurances and certifications.
98.16 Plan provisions.
98.17 Period covered by Plan.
98.18 Approval and disapproval of Plans and Plan amendments.

Subpart C—Eligibility for Services

98.20 A child's eligibility for child care services.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

98.30 Parental choice.
98.31 Parental access.
98.32 Parental complaints.
98.33 Consumer education.
98.34 Parental rights and responsibilities.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

98.40 Compliance with applicable State and local regulatory requirements.
98.41 Health and safety requirements.
98.42 Sliding fee scales.
98.43 Equal access.
98.44 Priority for child care services.
98.45 List of providers.
98.46 Nondiscrimination in admissions on the basis of religion.
98.47 Nondiscrimination in employment on the basis of religion.

Subpart F—Use of Child Care and Development Funds

98.50 Child care services.
98.51 Activities to improve the quality of child care.
98.52 Administrative costs.
98.53 Matching Fund requirements.
98.54 Restrictions on the use of funds.
98.55 Cost allocation.

Subpart G—Financial Management

98.60 Availability of funds.
98.61 Allotments from the Discretionary Fund.
98.62 Allotments from the Mandatory Fund.
98.63 Allotments from the Matching Fund.
98.64 Reallotment and redistribution of funds.
98.65 Audits and financial reporting.
98.66 Disallowance procedures.
98.67 Fiscal requirements.

Subpart H—Program Reporting Requirements

98.70 Reporting requirements.
98.71 Content of reports.

Subpart I—Indian Tribes

98.80 General procedures and requirements.
98.81 Application and Plan procedures.
98.82 Coordination.
98.83 Requirements for tribal programs.
98.84 Construction and renovation of child care facilities.

Subpart J—Monitoring, Non-Compliance and Complaints

98.90 Monitoring.
98.91 Non-compliance.
98.92 Penalties and sanctions.
98.93 Complaints.

Authority: 42 U.S.C. 618, 9858.

Subpart A—Goals, Purposes and Definitions

§ 98.1 Goals and purposes.

(a) The goals of the CCDF are to:

(1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;

(2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

(3) Encourage States to provide consumer education information to help parents make informed choices about child care;

(4) Assist States to provide child care to parents trying to achieve independence from public assistance; and

(5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(c) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that Lead Agencies:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs that provide for the changing needs of recipient families;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; and

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part and part 99:

The Act refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, as amended and codified at 42 U.S.C. 9858 et seq.

ACF means the Administration for Children and Families;

Application is a request for funding that includes the information required at § 98.13;

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services;

Caregiver means an individual who provides child care services directly to an eligible child on a person-to-person basis;

Categories of care means center-based child care, group home child care, family child care and in-home care;

Center-based child care provider means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Child care certificate means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

Child Care and Development Fund (CCDF) means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

Child care provider that receives assistance means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

Child care services, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

Construction means the erection of a facility that does not currently exist;

The Department means the Department of Health and Human Services;

Discretionary funds means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

Eligible child means an individual who meets the requirements of § 98.20;

Eligible child care provider means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

Facility means real property or modular unit appropriate for use by a grantee to carry out a child care program;

Family child care provider means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Group home child care provider means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

In-home child care provider means an individual who provides child care services in the child's own home;

Lead agency means the State, territorial or tribal entity designated under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided;

Licensing or regulatory requirements means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

Liquidation period means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60.;

Major renovation means: (1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or

(2) Extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change;

Mandatory funds means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

Matching funds means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

Modular unit means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

Obligation period means the time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

Parent means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis;*

The Plan means the Plan for the implementation of programs under the CCDF;

Program period means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality

and availability activities pursuant to § 98.51;

Provider means the entity providing child care services;

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

The regulation refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

Secretary means the Secretary of the Department of Health and Human Services;

Sectarian organization or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

Sectarian purposes and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

Services for which assistance is provided means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

Sliding fee scale means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

State means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and includes Tribes unless otherwise specified;

Tribal Mandatory funds means the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and tribal organizations; and

Types of providers means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead Agency responsibilities.

The Lead Agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate CCDF services pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

(1) Determine the basic usage and priorities for the expenditure of CCDF funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of any sub-grantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local or non-governmental agencies through which State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

§ 98.12 Coordination and consultation.

The Lead Agency shall:

(a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

§ 98.13 Applying for funds.

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

(a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.

(b) The following assurances or certifications:

(1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;

(2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF–LLL) that discloses lobbying payments;

(3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;

(4) A certification that no principals have been debarred pursuant to 45 CFR 76.500;

(5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103–277, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a) Coordinate the provision of services funded under this Part with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children. At a minimum, the Lead Agency shall coordinate with the State, and if applicable, tribal agencies responsible for:

(1) Public health, including the agency responsible for immunizations;

(2) Employment services/workforce development;

(3) Public education; and

(4) Providing Temporary Assistance for Needy Families, and provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(b) Consult with appropriate representatives of local governments;

(c)(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

§ 98.15 Assurances and certifications.

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(g).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year services, pursuant to § 98.53(h)(1).

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) In accordance with § 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(2) As required by § 98.32, it maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(3) It will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices, as required by § 98.33;

(4) There are in effect licensing requirements applicable to child care services provided within the State (or area served by tribal Lead Agency), pursuant to § 98.40;

(5) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(6) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements; and

(7) Payment rates for the provision of child care services, in accordance with § 98.43, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs.

§ 98.16 Plan provisions.

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) The assurances and certifications listed under § 98.15;

(c)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.53(f);

(d) A description of the coordination and consultation processes involved in the development of the Plan, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14 (a) and (b);

(e) A description of the public hearing process, pursuant to § 98.14(c);

(f) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable);

(8) Very low income; and

(9) *in loco parentis.*

(g) For child care services pursuant to § 98.50:

(1) A description of such services and activities;

(2) Any limits established for the provision of in-home care and the justification of such limits pursuant to § 98.30(e)(1)(iv);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e).

(5) Any additional eligibility criteria, priority rules and definitions established pursuant to § 98.20(b);

(h) A description of the activities to improve the quality and availability of child care, to provide comprehensive consumer education, and to increase parental choice, pursuant to § 98.51;

(i) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF, pursuant to § 98.42;

(j) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41;

(k) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(l) Payment rates and a summary of the facts, including a biennial local market rate survey, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43;

(m) A detailed description of how the Lead Agency maintains a record of substantiated parental complaints and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(n) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(o) A detailed description of the licensing requirements applicable to child care services provided, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(p) Pursuant to § 98.33(b), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(q) A description of the efforts to ensure that pre-Kindergarten programs, for which funds under § 98.53(b) are claimed, meet the needs of working parents; and

(r) Such other information as specified by the Secretary.

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of two years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(c) *Appeal of disapproval of a Plan or Plan amendment.*

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child shall:

(1)(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section. At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42(c) may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(b) Pursuant to § 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a)(1) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

(i) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(ii) To receive a child care certificate as defined in § 98.2.

(2) Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)(1) For child care services, certificates under paragraph (a)(1)(ii) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Group home child care;

(iii) Family child care; and

(iv) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its plan at § 98.16(g)(2).

(2) Under each of the categories in paragraph (e)(1) of this section, care by a sectarian provider may not be limited or excluded.

(3) Lead Agencies shall provide information regarding the range of provider options under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.43, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Lead Agencies shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. Lead Agencies shall provide a detailed description of such procedures.

§ 98.32 Parental complaints.

Lead Agencies shall:

(a) Maintain a record of substantiated parental complaints;

(b) Make information regarding such parental complaints available to the public on request; and

(c) Provide a detailed description of how such record is maintained and is made available.

§ 98.33 Consumer education.

Lead Agencies shall:

(a) Certify that they will collect and disseminate to parents and the general public consumer education information that will promote informed child care choices;

(b) Inform parents about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information provided shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine the whether the parent has a demonstrated inability to obtain needed child care, including:

(i) ''Appropriate child care'';

(ii) ''Reasonable distance'';

(iii) ''Unsuitability of informal child care'';

(iv) ''Affordable child care arrangements'';

(3) The clarification that the time during which an eligible parent receives the exception referred to in paragraph (b) will count toward the time limit on benefits required at section 408(a)(7) of the Social Security Act.

(c) Include in the biennial plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (b).

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Provide a detailed description of the requirements under paragraph (a) (1) of this section and of how they are effectively enforced.

(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunizations) as follows:

(i) States and Territories shall establish immunization requirements as part of their health and safety provisions that assure that children receiving services under the CCDF are age-appropriately immunized. Health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or territorial public health agency.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings [if living in a separate residence], aunts, and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object to immunization on religious grounds; and

(D) Children whose medical condition contraindicates immunization;

(iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements described in paragraph (a) of this section.

(e) For the purposes of this section, the term ''child care providers'' does not include grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to § 98.2.

§ 98.42 Sliding fee scales.

(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.

(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

§ 98.43 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide a summary of the facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include those facts that show:

(1) How a choice of the full range of providers, e.g., center, group, family, and in-home care, is made available;

(2) How payment rates are adequate based on a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan;

(3) How copayments based on a sliding fee scale are affordable, as stipulated at § 98.42.

(c) A Lead Agency may not establish different payment rates based on a family's eligibility status or circumstances.

(d) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in § 98.30.

(e) Nothing in this section shall be construed to create a private right of action.

§ 98.44 Priority for child care services.

Lead Agencies shall give priority for services provided under § 98.50(a) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 List of providers.

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

§ 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to

discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

Subpart F—Use of Child Care and Development Funds

§ 98.50 Child care services.

(a) Of the funds remaining after applying the provisions of § 98.50 (c), (d) and (e) the Lead Agency shall spend a substantial portion to provide child care services to low-income working families.

(b) Child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no less than four percent shall be used for activities to improve the quality of child care as described at § 98.51.

(d) Of the aggregate amount of funds awarded (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.52.

(e) Not less than 70 percent of the Mandatory and Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act,

(2) Are attempting through work activities to transition off such assistance program, and

(3) Are at risk of becoming dependent on such assistance program.

(f) Pursuant to § 98.16(g)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

§ 98.51 Activities to improve the quality of child care.

(a) No less than four percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

(1) These activities may include but are not limited to:

(i) Activities designed to provide comprehensive consumer education to parents and the public;

(ii) Activities that increase parental choice; and

(iii) Activities designed to improve the quality and availability of child care, including, but not limited to those described in paragraph (a)(2) of this section.

(2) Activities to improve the quality of child care services may include, but are not limited to:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part; and

(vi) Any other activities that are consistent with the intent of this section.

(b) Pursuant to § 98.16(h), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

§ 98.52 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and

(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(b) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

§ 98.53 Matching Fund requirements

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched:

(1) At the Federal medical assistance rate for the fiscal year 1995 irrespective of the fiscal year in which the funds are available; and

(2) If they are for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402 (g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use; and

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the donor and by the Lead Agency as available and representing expenditures eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to an entity designated by the State to receive donated funds pursuant to § 98.16(c)(2).

(g) The following are not counted as an eligible State expenditure under this Part:

(1) In-kind contributions; and

(2) Family contributions to the cost of care as required by § 98.42.

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(q), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State's matching funds under this subsection.

(4) If applicable, the CCDF plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20%, of either its maintenance-of-effort or State matching funds in a fiscal year. Also, the plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(3).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2, assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs.

§ 98.55 Cost allocation.

(a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes,

(2) Mandatory and Matching Funds are available to States;

(3) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold no more than one-quarter of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)(i) Mandatory Funds for States requesting Matching Funds per § 98.53 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Except for paragraph (d)(5) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(5) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(6) For purposes of the CCDF, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(7) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall, if received after the end of the applicable obligation period described at paragraphs (d) and (e), be returned to the Federal government.

(h) Repayment of loans, pursuant to § 98.51(a)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

§ 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to §§ 98.60(b) and 98.61 (b) and (c), shall be allotted based upon the formula specified in section 658O(b) of the Act.

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\sum\left(YCF_t \times APF_t\right)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ''YCF_t'' means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ''APF_t'' means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq) an amount up to two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to $2,000,000 may be reserved from the tribal funds reserved at § 98.61(c). From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the **Federal Register**.

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) and the amount reserved for Tribes pursuant to paragraph (b), an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under sections 402 (g) and (i) for fiscal year 1994 or 1995 (whichever is greater); or

(2) the average of the Federal share of its child care expenditures under sections 402 (g) and (i) for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations up to 2 percent of the amount appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1), shall be allocated according to the formula at paragraph (c). In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c):

(1) The Metlakatla Indian Community of the Annette Islands Reserve:

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to § 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

§ 98.63 Allotments from the Matching Fund.

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this subsection, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance and under § 98.62 (a) and (b) for the Mandatory Fund.

(c) Amounts under this subsection are available pursuant to the requirements at § 98.53(c).

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Funds granted to the Territories are not subject to reallotment. Any funds granted to the Territories that are returned after they have been allotted will revert to the Federal government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term ''State'' means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(a).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(iv) If a State does not accept its share of the reallotted funds, those funds will be returned to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) States receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.53(c) in the period for which the grant was first made. For purposes of this paragraph the term ''State'' means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under § 98.63(a), but not granted, revert to the Federal government.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF–696) and is subject to the monetary limits at paragraph (b)(2).

(4) A State eligible to receive redistributed Matching Funds will also use the ACF–696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallotted tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by Tribes, the Secretary will reallot Tribal Discretionary Funds among the other Tribes.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to § 98.62(c).

(ii) If the total amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to an applicant Tribe is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a Tribe does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that Tribe does not have any funds available for reallotment; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) Tribes receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.65 Audits and financial reporting.

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with OMB Circular A–128 and the Single Audit Act.

(b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal Government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.

(e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

(f) The audit required in paragraph (a) shall be conducted by an agency that is independent of the State, Territory or Tribe.

(g) The Secretary shall require financial reports as necessary.

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.

(c)(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Lead Agency may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Lead Agency's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.

(3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.90, the findings of which have been appealed by the Lead Agency.

(j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

(1) Preparation of reports required by the Secretary under this subpart and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Reporting requirements.

(a) Quarterly Disaggregate Report—

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly disaggregate report of monthly family unit data. Data shall be collected monthly and submitted quarterly.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than February 15, 1998, and quarterly thereafter. The first report shall include data from the first quarter of FFY 1998 (October 1997 through December 1997).

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting disaggregate data for the entire population receiving CCDF services.

(4) Quarterly disaggregate family unit reports to the Secretary shall include the information listed in § 98.71(a).

(b) Biannual Report—

(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary a biannual report. The report shall be submitted, in a manner specified by the Secretary, by June 30 and December 31 of each year and shall cover the most recent six-month federal fiscal period (October through March or April through September, as appropriate).

(2) The first biannual aggregate report shall be submitted no later than December 31, 1997, and every six months thereafter.

(3) Biannual reports to the Secretary shall include the information listed in § 98.71(b).

(c) Tribal Annual Report

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Annual reports to the Secretary shall include the information listed in § 98.71(c).

§ 98.71 Content of reports.

(a) At a minimum, a State or territorial Lead Agency's quarterly disaggregate report to the Secretary, as required in § 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) family income;

(2) county of residence;

(3) gender and month/year of birth of children;

(4) race of children;

(5) whether the family includes only one parent;

(6) the sources of family income, including the amount obtained from

employment (including self-employment), cash or other assistance under Part A of title IV of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977; child support payments, and other assistance programs;

(7) the number of months the family has received benefits;

(8) the type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care);

(9) whether the child care provider involved was a relative;

(10) the cost of child care for such families;

(11) the total expected dollar amount per month to be received by the provider for each child;

(12) the total hours per month of such care;

(13) Social Security Number of the head of the family unit receiving child care assistance;

(14) reasons for receiving care; and

(15) any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's biannual aggregate report to the Secretary, as required in § 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) the number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) the number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) the total number (without duplication) of children and families served under CCDF; and

(5) any additional information that the Secretary shall require.

(c) At a minimum, a tribal Lead Agency's annual report to the Secretary, as required in § 98.70(c), shall include the following information on services provided through all CCDF tribal grant awards:

(1) unduplicated number of families and children receiving services;

(2) children served by age;

(3) children served by reason for care;

(4) children served by payment method (certificate/voucher or contract/grants);

(5) average number of hours of care provided per week;

(6) average hourly amount paid for care;

(7) children served by level of family income; and

(8) children served by type of child care providers.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or tribal organization (as described in Subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving CCDF funds shall:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and

(2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium; and

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.20(a)(2), a tribal program may use either:

(1) 85 percent of the State median income for a family of the same size; or

(2) 85 percent of the median income for a family of the same size residing in the area served by the tribal Lead Agency.

§ 98.81 Application and Plan procedures.

(a) In order to receive CCDF funds, a tribal Lead Agency shall apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

(b) A tribal Lead Agency shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall be accompanied by a tribal resolution identifying the Lead Agency, pursuant to § 98.83(a).

(2) The Plan shall include the basis for determining family eligibility pursuant to § 98.80(f).

(3) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(4) The tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to § 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to § 98.83(b).

(5) The Plan shall include any information, as prescribed by the

Secretary, necessary for determining the number of children in accordance with §§ 98.61(c), 98.62(c), and 98.80(b)(1).

(6) Plans for those Tribes specified at § 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in § 98.16(g)(2) or § 98.16(k) unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

(7) The Plan is not subject to requirements in § 98.16(f)(8) or § 98.16(g)(4).

(8) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to § 98.80(b)(2).

(9) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to § 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to § 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at § 98.80(c)(4).

(c) When initially applying under paragraph (a) of this section, a tribal Lead Agency shall include a Plan that meets the provisions of this part and shall be for a two-year period, pursuant to § 98.17(a).

§ 98.82 Coordination.

Tribal applicants shall coordinate as required by §§ 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

§ 98.83 Requirements for tribal programs.

(a) The grantee shall designate an agency, department, or unit to act as the tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities shall be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their two-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(d) Tribal Lead Agencies shall not be subject to the requirements at §§ 98.41(a)(1)(i), 98.44(a), 98.50(e) 98.52(a), 98.53 and 98.63.

(e) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (g) of this section or the quality expenditure requirement § 98.51(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(f) Tribal Lead Agencies whose total CCDF allotment pursuant to §§ 98.61(c) and 98.62(b) is less than an amount established by the Secretary shall not be subject to the following requirements:

(1) The assurance at § 98.15(a)(2);

(2) The requirement for certificates at § 98.30(a) and § 98.30(d); and

(3) The requirements for quality expenditures § 98.51(a).

(g) A tribal Lead Agency may use up to 15 percent of its total CCDF per child amount provided under §§ 98.61(c) and 98.62(b) (including funds used for construction or major renovation in accordance with § 98.84) for administrative costs. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(h)(1) CCDF funds are available for costs incurred by the tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (h)(1) of this section is subject to the actual availability of the appropriation.

§ 98.84 Construction and renovation of child care facilities.

(a) Upon requesting and receiving approval from the Secretary, tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the tribal Lead Agency as compared to the level of services provided by the tribal Lead Agency in the preceding fiscal year.

(c)(1) Tribal Lead Agencies may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A tribal Lead Agency may not use CCDF funds to pay for the costs of an architect, engineer, or other consultant before its request is approved by the Secretary.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 92.31;

(2) Transfer and disposition of property requirements at 45 CFR 92.31(c);

(3) Title requirements at 45 CFR 92.31(a);

(4) Cost principles and allowable cost requirements at 45 CFR 92.22;

(5) Program income requirements at 45 CFR 92.25;

(6) Procurement procedures at 45 CFR 92.36; and;

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a), for minor renovation.

Subpart J—Monitoring, Non-Compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to § 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to §§ 98.90 or 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow the improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)(i) A penalty of not more than four percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to properly implement a provision of the Act, these regulations, or the Plan required under § 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; and

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(d) Nothing in this section, or in §§ 98.90 or 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b).

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in § 98.90.

PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT FUND

2. The heading of part 99 is revised to read as set forth above.

3. The authority citation for part 99 is revised to read as follows:

Authority: 42 U.S.C. 618, 9858

PART 99—[AMENDED]

4. In part 99 make the following changes:

a. Remove the words ''Child Care and Development Block Grant'' and add in their place, wherever they appear, the words ''Child Care and Development Fund.''

b. Remove the word ''Grantees'' and add in its place, wherever it appears, the words ''Lead Agencies.''

c. Remove the word ''Grantee'' and add in its place, wherever it appears, the words ''Lead Agency.''

d. Remove the words ''Block Grant Plan'' and add in their place, wherever they appear, the words ''CCDF Plan.''

[FR Doc. 97–19062 Filed 7–22–97; 8:45 am]

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July 23, 1997

Part III

Postal Rate Commission

Filing of Proposed Postal Rate, Fee, and Classification Changes and Order Instituting Proceedings; Notice

POSTAL RATE COMMISSION

[Docket No. R97–1; Order No. 1186]

Notice of The U.S. Postal Service's Filing of Proposed Postal Rate, Fee, and Classification Changes and Order Instituting Proceedings

Issued July 11, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III

I. Notice of the Service's Filing

On July 10, 1997, the United States Postal Service, acting under sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. §§ 3622, 3623), filed a Request with the Postal Rate Commission for a recommended decision on proposed changes in domestic postage rates and fees and in certain mail classifications. The proposed rate and fee changes affect all classes of mail. The Request maintains that without the rate and fee changes, the Postal Service would incur a revenue deficiency of approximately $2.4 billion in the proposed test year (1998), in contravention of 39 U.S.C. § 3621. The Request states that proposed rates will generate a revenue surplus of approximately $41.9 million.

An overview of the Service's filing follows. The entire contents of the Service's filing, along with supporting documentation, is available for public inspection in the Commission's docket section. See Part II.F. for information about Docket Room operations.

First-Class Mail rates. The Service's Request includes a proposal to increase the price of the First-Class stamp by one cent, from 32 cents to 33 cents, and to hold the rate for each additional ounce of First-Class Mail at its current price of 23 cents per ounce. Basic postage for a card changes by one cent, increasing from 20 to 21 cents. In addition, the Service is proposing a prepaid reply mail category, at a discounted rate of 30 cents. The Service states that this discounted rate is intended to benefit the public served by large-volume business mailers, such as utility companies or credit card companies. Additional information about this proposal, as well as about rates affecting mailers using other classes of mail, appears later in this Notice.

Major classification changes; rate design In addition to rate and fee changes, the Service is also proposing changes in classification and rate design. Both types of changes can have a significant effect on postage and mailing requirements. A summary of the Service's proposed classification changes follows. To obtain additional details, persons interested in rate design changes should consult the Service's filing and the proposed rate schedules which appear as Attachment B to this notice.

First-Class Mail classification changes. The Service proposes three changes in the structure of First-Class Mail. One change entails the introduction of Prepaid Reply Mail and Qualified Business Reply Mail postage rates for both letters and cards, at the discounted rate of 30 cents for letters and 18 cents for cards. Another change involves the elimination of the heavy-piece discount, which currently applies to presort mail weighing more than two ounces. The third change is the introduction of a Hazardous Medical Materials surcharge.

The Service states that with Prepaid Reply Mail, businesses or other organizations can provide their correspondents with Postal Service-approved, postage-paid courtesy envelopes or cards that will enable the correspondents to return mail, such as bill payments, without affixing postage. Postage and a monthly administration fee for this mail must be prepaid by the envelope provider. Qualified Business Reply Mail, with proposed rates identical to Postage Reply Mail (PRM), differs in terms of postage accounting and auditing. However, as with PRM, the provider of the envelope would pay the postage and fees under the Service's proposal.

Periodicals classification changes. In the Periodicals class (formerly referred to as second-class mail), the Postal Service proposes realignment of the existing 3/5-digit rate category in each of the subclasses (Regular, Within County, Nonprofit and Classroom). Specifically, the Service proposes splitting the category that currently includes both 3-and 5-digit mail into separate 3-digit and 5-digit categories. Thus, all Periodicals subclasses will have 3-digit piece rates and 5-digit piece rates for both letters and flats for automation compatible mail. The proposal also entails including pieces sorted to non-unique 3-digit ZIP codes in the proposed 3-digit classification. Currently, non-unique 3-digit ZIP Codes are included in the basic (required) presort category.

Standard Mail classification changes. In Standard Mail (formerly third-class and fourth-class mail), the Service proposes the elimination of the Standard Mail (A) Single-Piece subclass and the introduction of a Residual Shape surcharge applicable to pieces that are not letter or flat shaped. See generally USPS–T–36 at 1–2. For Standard Mail (B), the Service proposes a number of new parcel discounts and expands weight and size limits.

Special Services classification changes. The Service proposes classification changes affecting registered mail, business reply mail, and the newly-proposed prepaid reply mail. The registered mail proposal would limit uninsured registered mail to merchandise of no declared value. The Service also proposes a bulk insurance discount of 40 cents for bulk mailers who process mailing records electronically. Classification changes affecting business reply mail include adding an annual permit fee and a monthly accounting fee for permit reply mail. The introduction of prepaid reply mail was discussed earlier in this in connection with the Service's proposed First-Class Mail rates. In a separate but related matter, the Service also proposes restructuring the DMCS language for special services. USPS–T–39 at 102. The effect of this restructuring, which includes renumbering and numerous non-substantive editorial changes, is shown in Attachment A.

Other changes. Among other things, the Service is proposing delivery confirmation services for Priority Mail and for Standard Mail (B). In Standard Mail (A) the Service's proposal reduces pound rates for various categories of advertising mail. This proposal also raises substantially the Enhanced Carrier Route Basic Letter rate.

Costing. The Service's Request is based, in part, on costing approaches that differ significantly from previous approaches. These changes affect, among other things, the analysis and attribution of mail processing costs, carrier costs, and transportation costs. The overall effect of these changes is that the levels of attribution from which mark-ups are calculated are considerably lower than the Service proposed in Docket No. R94–1 or the Commission used in its recommendation in that proceeding.

Contents of the Service's filing. The Service's filing includes its formal Request, seven attachments (A–G) and 42 pieces of testimony, presented by 40 witnesses. Testimony is supported, in many instances, with exhibits, workpapers, and library references. Attachment A identifies requested changes in the DMCS. Attachment B includes a comparison of current and proposed rates and fees. Attachment C, in response to rule 54(b)(2), specifies the rules, regulations and practices that establish standards of service and conditions of mailability. Attachment D includes the certification, required by rule 54(p), concerning the accuracy of

cost statements and other documentation submitted with the Request. Attachment E contains audited financial statements. Attachment F provides an index identifying witnesses by name, testimony, exhibits and workpapers by number, and the name and telephone number of the witness's attorney. Attachment G contains the Service's Compliance Statement. This statement addresses pertinent provisions of Commission rules of practice 54 and 64. It also refers to a separate notice that discusses several matters concerning the alternate cost presentation required under the rule. See Notice of the Postal Service Concerning Provision of Information Pursuant to Rule 54(a)(1) (July 10, 1997), citing (USPS–LR–H–196, ''Rule 54(a)(1) Alternate Commission Cost Presentation (Base Year)).''

Rate and fee increases. The approximate average percentage increases proposed by the Postal Service for the major categories of mail service follow. Since the percentages shown are averages, increases for individual mail pieces may differ substantially.

THE POSTAL SERVICE'S PROPOSED PERCENTAGE CHANGES IN RATES

Classification	Percent change
First Class Mail	
Letters	3.2
Cards	5.9
Priority Mail	7.4
Express Mail	3.7
Periodicals:	
In County	3.4
Nonprofit	3.9
Classroom	4.8
Regular Rate	3.5
Standard Mail A:	
Commercial Regular	4.1
Commercial Enhanced	3.2
Nonprofit	15.1
Nonprofit Enhanced	–4.8
Standard Mail B:	
Parcel Post	10.2
Bound Printed Matter	5.0
Special	0.0
Library	13.1

Source: USPS–T–30, Exhibit D.

THE POSTAL SERVICE'S PROPOSED PERCENT CHANGES IN FEES FOR SPECIAL SERVICES

Special services	Percent change
Post Office Boxes and Caller Service	18
Certified Mail	15
C.O.D.	12
Insurance	17
Money Orders	0
Registered Mail	51
Stamped Cards	(1)
Stamped Envelopes	16
Address Correction	0
Business Reply	51
Certificates of Mailing	15
First Class Presort Mailing Fee	18
Standard (B) Special Presort Mailing Fee	18
Parcel Airlift	13
Periodicals Applications	–1
Special Handling	221
Standard (A) Presort Mailing Fee	18
Correction of Mailing Lists	18
Furnishing Address Changes to Election Boards	18
Merchandise Return	0
On-Site Meter Setting	1.5
Permit Imprint	18
Zip-Coding of Mailing Lists	17
Return Receipts	32
Restricted Delivery	0

[1] New 2¢ fee.

Source: USPS–T–30, Exhibit E.

A complete list of current and proposed rates and fees appears in Attachment B.

Requested Classification Changes. The Postal Service's Request asks the Commission to recommend certain classification changes. These changes alter the Domestic Mail Classification Schedule (DMCS) and appear in Attachment A. The Service identifies recent amendments to the current text of the DMCS, and indicates that these amendments, along with the DMCS provisions codified at 39 CFR Part 3001, subpart C, appendix A, are incorporated by reference in its Request. See generally Attachment A at 1. In addition, the Service notes that it proposes renumbering the classification schedules for special services. A table identifying the changes appears in Attachment A at 2.

Availability of the Service's filing. The Postal Service's Request, along with supporting documentation, is available for public inspection in the Commission's docket section. See Part II. F for information about Docket Room hours.

II. Order Instituting Proceedings

The Commission hereby institutes proceedings to consider the Postal Service's Request, which has been assigned Docket No. R97–1. Details regarding the conduct of this proceeding follow. The Commission will issue additional notices regarding this proceeding as needed.

A. Nature of proceedings and possibility that the Commission's recommendation may differ from the Service's proposed changes. Proceedings in this docket will concern, in the first instance, the specific changes in current postal rates, fees and mail classification provisions proposed by the Postal Service in its Request. The Commission will also conduct public hearings to receive evidence sponsored by other interested parties, including the Commission's Office of the Consumer Advocate, that responds to the Postal Service's proposed changes and the evidence it offers in support of those changes. These presentations may include alternative rate, fee and mail classification proposals.

After the conclusion of hearings and the receipt of briefs from the Postal Service and other parties, the Commission will consider all proposals advanced and arguments made in conducting its deliberations in the case. Depending upon its assessment of the public policies and statutory factors mandated by the Postal Reorganization Act, the Commission may or may not recommend the exact array of rate, fee and mail classification changes requested by the Postal Service, or proposed in the direct cases of other participants. In order to accommodate applicable statutory considerations, while at the same time observing the technical constraints of setting rates and fees for all postal services, the Commission may recommend a schedule of postal rates and fees that will differ appreciably from those requested by the Postal Service or contained in the parties' alternative proposals. Similarly, the Commission may recommend mail classification changes different from those proposed by the Postal Service and other parties, or may decline to recommend proposed classification changes but address their objectives through other recommended adjustments in rates or fees for existing mail categories.

B. Participation: full, limited and commenter status. There are three main types of participation in Commission proceedings: full, limited or commenter status. Formal intervention in hearings on the Postal Service request generally takes the form of full intervention. However, the status of limited participant is also available under certain circumstances. Persons intending to seek either full or limited status must file a notice of intervention that complies with the Commission rules. These rules require certain information and representations, such as whether the intervenor intends to actively participate in the proceeding. Commenter status is available to those wishing to express their views informally. This status does not require a notice of intervention or compliance with the Commission's evidentiary rules. Other distinctions among the forms of participation are explained in Commission rules 20, 20a and 20b. (39 CFR 3001.20, 20a and 20b) Questions about the interpretation and application of these rules should be directed to the Commission's Office of Legal Advisor at (202) 789–6820.

Notices of intervention should be sent to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001, and are to be filed on or before August 6, 1997. In addition, intervenors are requested to provide a telephone number, facsimile number, and e-mail address if available.

C. Representation of the general public. The Commission designates W. Gail Willette, Director of the Commission's Office of the Consumer Advocate (OCA), as the representative of the general public in this proceeding. Ms. Willette shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither she nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity. Parties shall serve the OCA separately with three copies of all filings in addition to, and at the same time as they effect service on the Commission.

D. Scheduling: Hearing schedule and date for prehearing conference procedural schedule. The Commission intends to conduct this case with the utmost expedition consistent with the due process rights of all participants. Upon intervention, participants may submit formal discovery or contact the Postal Service to request an informal technical conference. Attachment C to this Notice and Order sets out the procedural schedule for the conduct of this case. Participants should address requests to adjust this schedule to the Presiding Officer.

Prehearing conference. An initial prehearing conference will be held on July 30, 1997, for the purpose of facilitating the conduct of this case. Participants proposing to raise topics for discussion at the prehearing conference should file notice to that effect on or before July 25, 1997. In accordance with the Commission's goal of expeditious consideration, the Commission will conduct all prehearing conferences and hearings en banc (39 CFR 3001.30(b)). Additional prehearing conferences will be scheduled if needed. Unless otherwise indicated, all conferences and hearings will begin at 9:30 a.m. in the Postal Rate Commission's hearing room, 1333 H Street NW, Suite 300, Washington, DC 20268–0001. Hearings will be conducted on the record and transcribed by an official reporter, unless the presiding officer determines otherwise.

E. Special rules of practice. The Special Rules of Practice for this case are set forth in Attachment D. These Special Rules are identical to the special rules currently in use in Docket No. MC97–4. Participants should address requests to adjust these rules to the Presiding Officer.

F. Docket Room Operations. Documents may be filed with the Commission's docket section Monday through Friday between 8 a.m. and 5 p.m. Questions about docket room operations should be directed to Ms. Peggie Brown (at 202–789–6847) or Ms. Joyce Taylor (at 202–789–6846).

It is ordered:

1. The Commission will sit en banc in the above-captioned proceeding.
2. Notices of intervention shall be filed by August 6, 1997.
3. W. Gail Willette, Director of the Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.
4. A prehearing conference in this proceeding will be held July 30, 1997. The hearing will begin at 9:30 a.m. in the Postal Rate Commission hearing room, 1333 H Street NW, Suite 300, Washington, DC 20268–0001.
5. Topics for discussion at the prehearing conference should be submitted on or before July 25, 1997.
6. The Procedural Schedule for the conduct of this proceeding is set out in Attachment C.
7. These proceedings shall be conducted pursuant to special rules of practice set out in Attachment D.
8. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Attachment A—Requested Changes in the Domestic Mail Classification Schedule

In its Request, the Postal Service asks the Commission to recommend certain changes in the Domestic Mail Classification Schedule (DMCS). The requested changes alter the DMCS as amended from time-to-time. The most recent amendments are the Decision of the Governors on the Recommended Decision of the Postal Rate Commission on Special Services Fees and Classifications, Docket No. MC96–3 (Special Services Decision), as implemented by Resolution 97–7 of the Board of Governors and the Decision of the Governors on the Recommended Decision of the Postal Rate Commission on the Experimental Nonletter-Size Business Reply Mail Categories and Fees, Docket No. MC97–1 (BRM Decision), as implemented by Resolution 97–8 of the Board of Governors.

The current DMCS (which is published in part at 39 CFR Part 3001, subpart C, appendix A, in part as Attachment A to the Special Services Decision (62 Fed. Reg. 26,099), in part as Attachment A to the BRM Decision (62 Fed. Reg. 25,756), and in part as Attachment B to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Nonprofit Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals, and Within County Periodicals, Docket No. MC96–2 (61 Fed. Reg. 42,464)), is incorporated by reference in the Service's Request.

Except as otherwise noted, proposed additions to text of the classification schedules are underlined, and proposed deletions are in brackets. Classification schedules for special services, which are currently numbered as schedules SS–1–6, SS–8–16, and SS–18–20, are renumbered as indicated in the table below. Existing section numbers for the special service schedules do not appear as overstricken text in this attachment;

however, edits to the remaining text of the renumbered sections appear as they are printed in the existing special service schedules, and edits to the remaining text are in brackets or underlined, as appropriate.

SPECIAL SERVICES—DMCS CROSS-REFERENCE TABLE, EXISTING TO PROPOSED

Service	Existing DMCS section	Proposed DMCS section
Address Correction Service.	SS–1	911
Business Reply Mail	SS–2	931
Caller Service	SS–3	921
Certificate of Mailing	SS–4	947
Certified Mail	SS–5	941
Collect on Delivery Service.	SS–6	944
Domestic Postal Money Orders.	SS–8	971
Insured Mail	SS–9	943
Post Office Box Service.	SS–10	921
Mailing List Services	SS–11	912
On-Site Meter Setting.	SS–12	933
Parcel Airlift (PAL)	SS–13	951
Registered Mail	SS–14	942
Restricted Delivery	SS–15	946
Return Receipts	SS–16	945
Special Handling	SS–18	952
Stamped Envelopes	SS–19	961
Stamped Cards	SS–19A	962
Merchandise Return	SS–20	932

The changes in the DMCS requested by the Postal Service are as follows.

Amend the Domestic Mail Classification Schedule as follows:

Expedited Mail Classification Schedule

110 DEFINITION

Expedited Mail is mail matter entered as Express Mail [in accordance with] under the provisions of this Schedule. Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail. Insurance is either included in Express Mail postage or is available for an additional charge, depending on the value and nature of the item sent by Express Mail.

120 DESCRIPTION OF SERVICES

121 Same Day Airport Service

Same Day Airport service is available between designated airport mail facilities.

122 Custom Designed Service

122.1 General. Custom Designed service is available between designated postal facilities or other designated locations for mailable matter tendered [in accordance with] *under* a service agreement between the Postal Service and the mailer. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. 403(c).

122.2 Service Agreement. A service agreement shall set forth the following:

a. The scheduled place for each shipment tendered for service to each specific destination;

b. Scheduled place for claim, or delivery, at destination for each scheduled shipment;

c. Scheduled time of day for tender at origin and for claim or delivery at destination.

122.3 Pickup and Delivery. Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as [prescribed] *specified* by the Postal Service.

122.4 Commencement of Service Agreement. Service provided pursuant to a service agreement shall commence not more than 10 days after the signed service agreement is tendered to the Postal Service.

122.5 Termination of Service Agreement

122.51 Termination by Postal Service. Express Mail service provided pursuant to a service agreement may be terminated by the Postal Service upon 10 days prior written notice to the mailer if:

a. Service cannot be provided for reasons beyond the control of the Postal Service or because of changes in Postal Service facilities or operations, or

b. The mailer fails to adhere to the terms of the service agreement or this schedule.

122.52 Termination by Mailers. The mailer may terminate a service agreement, for any reason, by notice to the Postal Service.

123 Next Day Service and Second Day Service

123.1 Availability of Services. Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times[prescribed] *specified* by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for second day delivery.

123.2 Pickup Service. Pickup service is available for Next Day and Second Day Services under terms and conditions as [prescribed] specified by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

130 PHYSICAL LIMITATIONS

Express Mail may not exceed 70 pounds or 108 inches in length and girth combined.

140 POSTAGE AND PREPARATION

Except as provided in Rate Schedules 121, 122 and 123, postage on Express Mail is charged on each piece. For shipments tendered in Express Mail pouches under a service agreement, each pouch is a piece.

150 DEPOSIT AND DELIVERY

151 Deposit

Express Mail must be deposited at places designated by the Postal Service.

152 Receipt

A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Express Mail by the Postal Service. This receipt serves as evidence of mailing.

153 Service

Express Mail service provides a high speed, high reliability service. Same Day Airport Express Mail will be dispatched on the next available transportation to the destination airport mail facility. Custom Designed Express Mail will be available for claim or delivery as specified in the service agreement.

154 Forwarding and Return

When Express Mail is returned, or forwarded, as [prescribed] specified by the Postal Service, there will be no additional charge.

160 ANCILLARY SERVICES

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Schedule
a. Address correction	*911*[SS–1]
b. Return receipts	*945*[SS–16]
c. COD	*944*[SS–6]
d. Express Mail Insurance	*943*[SS–9]

170 RATES AND FEES

The rates for Express Mail are set forth in the following rate schedules:

Service	Schedule
a. Same Day Airport	121
b. Custom Designed	122
c. Next Day Post Office-to-Post Office	123
d. Second Day Post Office-to-Post Office	123
e. Next Day Post Office-to-Addressee	123
f. Second Day Post Office-to-Addressee	123

180 REFUNDS

181 Procedure

Claims for refunds of postage must be filed within the period of time and under terms and conditions [prescribed] *specified* by the Postal Service.

182 Availability

182.1 Same Day Airport. The Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified, unless the delay is caused by:

a. Strikes or work stoppage;

b. Delay or cancellation of flights; or

c. Governmental action beyond the control of Postal Service or air carriers.

182.2 Custom Designed. Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, unless the item was delayed by strike or work stoppage.

182.3 Next Day. Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) [prescribed] specified by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) [prescribed] specified by the Postal Service,

of the next delivery day in the case of Post Office-to-Addressee service.

182.4 Second Day. Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) [prescribed] specified by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) [prescribed] specified by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

190 *Hazardous Medical Materials And Other Mailable Hazardous Materials Surcharges. Express Mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.*

First-Class Mail Classification Schedule

210 DEFINITION

Any matter eligible for mailing may, at the option of the mailer, be mailed as First-Class Mail. The following must be mailed as First-Class Mail, unless mailed as Express Mail or exempt under title 39, United States Code, or except as authorized under sections 344.12, 344.23 and 443:

a. Mail sealed against postal inspection as set forth in section 5000;

b. Matter wholly or partially in handwriting or typewriting except as specifically permitted by sections 312, 313, 323, 344.22, and 446;

c. Matter having the character of actual and personal correspondence except as specifically permitted by sections 312, 313, 323, 344.22, and 446; and

d. Bills and statements of account.

220 DESCRIPTION OF SUBCLASSES

221 Letters and Sealed Parcels Subclass

221.1 General. The Letters and Sealed Parcels subclass consists of First-Class Mail weighing 11 ounces or less that is not mailed under section 222 or 223.

221.2 Regular Rate Categories. The regular rate categories consist of Letters and Sealed Parcels subclass mail not mailed under section 221.3.

221.21 [Single Piece] *Single-Piece* Rate Category. The single-piece rate category applies to regular rate Letters and Sealed Parcels subclass mail not mailed under section 221.22[.], *221.23, or 221.24.*

221.22 Presort Rate Category. The Presort rate category applies to Letters and Sealed Parcels subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as [prescribed] *specified* by the Postal Service; and

c. Meets the addressing and other preparation requirements [prescribed] *specified* by the Postal Service.

221.23 *Prepaid Reply Mail Rate Category. The Prepaid Reply Mail category applies to Letters and Sealed Parcels subclass mail that:*

a. Is provided to senders with postage-prepaid by the recipient, a Prepaid Reply Mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the letter machinability and other preparation requirements specified by the Postal Service.

221.24 *Qualified Business Reply Mail Rate Category. The Qualified Business Reply Mail category applies to Letters and Sealed Parcels subclass mail that:*

a. Is provided to senders by the recipient, an advance deposit account Business Reply Mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the letter machinability and other preparation requirements specified by the Postal Service.

221.25 Nonstandard Size Surcharge. Regular rate category Letters and Sealed Parcels subclass mail is subject to a surcharge if it is nonstandard size mail, as defined in section 232.

[221.25 Presort Discount for Pieces Weighing More Than Two Ounces. Presort rate category Letters and Sealed Parcels subclass mail is eligible for an additional presort discount on each piece weighing more than two ounces.]

221.3 Automation Rate Categories—Letters and Flats

221.31 General. The automation rate categories consist of Letters and Sealed Parcels subclass mail weighing 11 ounces or less that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements [prescribed] *specified* by the Postal Service.

221.32 Basic Rate Category. The basic rate category applies to letter-size automation rate category mail not mailed under section 221.33, 221.34, or 221.35.

221.33 Three-Digit Rate Category. The three-digit rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

221.34 Five-Digit Rate Category. The five-digit rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

0221.35 Carrier Route Rate Category. The carrier route rate category applies to letter-size automation rate category mail presorted to carrier routes. It is available only for those carrier routes [prescribed] *specified* by the Postal Service.

221.36 Basic Flats Rate Category. The basic flats rate category applies to flat-size automation rate category mail not mailed under section 221.37.

221.37 Three- and Five-Digit Flats Rate Category. The three- and five-digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

221.38 Nonstandard Size Surcharge. Flat-size automation rate category pieces are subject to a surcharge if they are nonstandard size mail, as defined in section 232.

[221.39 Presort Discount for Pieces Weighing More Than Two Ounces. Presorted automation rate category mail is eligible for an additional presort discount on each piece weighing more than two ounces.]

221.4 Automation Rate Category—Parcels

221.41 Prebarcoded Parcel Rate Category. The prebarcoded parcel rate category applies to Letters and Sealed Parcels subclass nonpresorted mail that:

a. Is prepared in a mailing of at least 50 pieces;

b. Bears a barcode as [prescribed] *specified* by the Postal Service;

c. Is marked and presented as [prescribed] *specified* by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements [prescribed] *specified* by the Postal Service.

This provision is applicable only to mailings entered for processing at no more than six facilities designated by the Postal Service. This provision expires April 28, 1998.

221.5 *Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Letters and Sealed Parcels subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.*

222 [Stamped Cards and Post Cards] *Cards* Subclass

222.1 Definition

[222.11 Stamped Card. A Stamped Card is a card with postage imprinted or impressed on it and supplied by the Postal Service for the transmission of messages.]

222.1[2]*1* [Post Card*Cards.*] *The Cards subclass consists of Stamped Cards, defined in classification schedule 962, and postcards.* A [post card] *postcard* is a privately printed mailing card for the transmission of messages. To be eligible to be mailed as a First-Class [post card] *postcard*, a card must be of uniform thickness and must not exceed any of the following dimensions:

a. 6 inches in length;

b. 4¼ inches in width;

c. 0.016 inch in thickness.

222.1[3]*2* Double Cards. Double Stamped Cards or [post cards] *postcards* may be mailed as Stamped Cards or [post cards]*postcards*. [A d]*D*ouble Stamped Card*s are defined in classification schedule 962. [*or post card] *A double postcard* consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single [Stamped Card or] *postcard* [post card].

222.2 Restriction. A mailpiece with any of the following characteristics is not mailable as a Stamped Card or [post card] *postcard* unless it is prepared as [prescribed] *specified* by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing in the address portion of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

222.3 Regular Rate Categories

222.31 Single-Piece Rate Category. The single-piece rate category applies to regular rate [Stamped Cards and Post] Cards subclass mail not mailed under section 222.32[.], *222.33, or 222.34.*

222.32 Presort Rate Category. The presort rate category applies to [Stamped Cards and Post] Cards subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as [prescribed] *specified* by the Postal Service; and

c. Meets the addressing and other preparation requirements [prescribed] *specified* by the Postal Service.

222.33 *Prepaid Reply Mail Rate Category. The Prepaid Reply Mail category applies to Cards subclass mail that:*

a. Is provided to senders with postage-prepaid by the recipient, a Prepaid Reply Mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the card machinability and other preparation requirements specified by the Postal Service.

0222.34 *Qualified Business Reply Mail Rate Category. The Qualified Business Reply Mail category applies to Cards subclass mail that:*

a. Is provided to senders by the recipient, an advance deposit account Business Reply Mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the card machinability and other preparation requirements specified by the Postal Service.

222.4 Automation Rate Categories

222.41 General. The automation rate categories consist of [Stamped Cards and Post] Cards subclass mail that: a.

Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements [prescribed] *specified* by the Postal Service.

222.42 Basic Rate Category. The basic rate category applies to automation rate category cards not mailed under section 222.43, 222.44, or 222.45.

222.43 Three-Digit Rate Category. The three-digit rate category applies to automation rate category cards presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

222.44 Five-Digit Rate Category. The five-digit rate category applies to automation rate category cards presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

222.45 Carrier Route Rate Category. The carrier route rate category applies to automation rate category cards presorted to carrier routes. It is available only for those carrier routes [prescribed] *specified* by the Postal Service.

223 Priority Mail

223.1 General. The Priority Mail subclass consists of:

a. First-Class Mail weighing more than 11 ounces; and

b. Any mailable matter which, at the option of the mailer, is mailed for expeditious mailing and transportation.

223.2 Single-Piece Priority Mail Rate Category. The single-piece *Priority Mail* [priority mail] rate category applies to Priority Mail subclass mail not mailed under section 223.[*34.*]

223.3 [Presorted Priority Mail Rate Category. The presorted priority mail *Priority Mail* rate category applies to Priority Mail subclass mail that:

a. Is prepared in a mailing of at least 300 pieces;]

b. Is presorted, marked, and presented as prescribed by the Postal Service; and

c. Meets the machinability, addressing, and other preparation requirements prescribed by the Postal Service.] [*reserved*]

223.4 Prebarcoded Priority Mail Parcel Rate Category. The prebarcoded Priority Mail Parcel rate category applies to Priority Mail [subclass nonpresorted mail] that:

a. Is prepared in a mailing of at least 50 pieces;

b. Bears a barcode as [prescribed] *specified* by the Postal Service;

c. Is marked and presented as [prescribed] *specified* by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements [prescribed] *specified* by the Postal Service.

This provision is applicable only to mailings entered for processing at no more than six facilities designated by the Postal Service. This provision expires April 28, 1998.

223.5 Flat Rate Envelope. Priority Mail subclass mail sent in a ''flat rate'' envelope provided by the Postal Service is charged the two-pound rate.

223.6 Pickup Service. Pickup service is available for Priority Mail subclass mail under terms and conditions [prescribed] *specified* by the Postal Service.

223.7 Bulky Parcels. Priority Mail subclass mail weighing less than 15 pounds, and measuring over 84 inches in length and girth combined, is charged a minimum rate equal to that for a 15-pound parcel for the zone to which the piece is addressed.

223.8 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Priority Mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

230 PHYSICAL LIMITATIONS

231 Size and Weight

First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined. Additional size and weight limitations apply to individual First-Class Mail subclasses.

232 Nonstandard Size Mail

Letters and Sealed Parcels subclass mail weighing one ounce or less is nonstandard size if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive; or

b. It exceeds any of the following dimensions:

i. 11.5 inches in length;

ii. 6.125 inches in width; or

iii. 0.25 inch in thickness.

240 POSTAGE AND PREPARATION

Postage on First-Class Mail must be paid as set forth in section 3000. Postage is computed separately on each piece of mail. Pieces not within the same postage rate increment may be mailed at other than a single-piece rate as part of the same mailing only when specific methods approved by the Postal Service for [ascertaining] *determining* and verifying postage are followed. All mail mailed at other than a single-piece rate must have postage paid in a manner not requiring cancellation.

250 DEPOSIT AND DELIVERY

251 Deposit

First-Class Mail must be deposited at places and times designated by the Postal Service.

252 Service

First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

253 Forwarding and Return

First-Class Mail that is undeliverable-as-addressed is forwarded or returned to the sender without additional charge.

260 ANCILLARY SERVICES

First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of the fees prescribed in the corresponding schedule:

Service	Schedule
a. Address correction	*911* [SS–1]
b. Business reply mail	*931* [SS–2]
c. Certificates of mailing	*947* [SS–4]
d. Certified mail	*941* [SS–5]
e. COD	*944* [SS–6]
f. Insured mail	*943* [SS–9]
g. Registered mail	*942* [SS–14]
h. Return receipt (limited to merchandise sent by Priority Mail).	*945* [SS–16]
i. Merchandise return	*932* [SS–20]
j. Delivery Confirmation (limited to Priority Mail).	*948*

270 RATES AND FEES

271 The rates [and fees] for First-Class Mail are set forth in the following schedules:

Service	Schedule
a. Letters and Sealed Parcels.	221
b. [Stamped Cards and Post] Cards.	222
c. Priority Mail	223
[d. Fees	SS–19A and 1000]

272 Keys and Identification Devices. Keys, identification cards, identification tags, or similar identification devices that:

(a) weigh no more than 2 pounds;

(b) are mailed without cover; and

(c) bear, contain, or have securely attached the name and address information, as specified by the Postal Service, of a person, organization, or concern, with instructions to return to the address and a statement guaranteeing the payment of postage due on delivery;

are subject to the following rates and fees:

(a) the applicable single-piece rates in schedules 221 or 223;

(b) the fee set forth in fee schedule 931 for payment of postage due charges if an active business reply mail advance deposit account is not used, and

(c) the nonstandard surcharge, if applicable, under section 232.

280 AUTHORIZATIONS AND LICENSES

The fee set forth in [Rate] Schedule 1000 must be paid once each year at each office of mailing by any person who mails other than single-piece First-Class Mail or courtesy envelope mail. Payment of the fee allows the mailer to mail at any First-Class rate.

Standard Mail Classification Schedule

310 DEFINITION

311 General

Any mailable matter may be mailed as Standard Mail except:

a. Matter required to be mailed as First-Class Mail;

b. Copies of a publication that is entered as Periodicals class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (*currently Periodicals class mail*) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)

312 Printed Matter

Printed matter, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual or personal correspondence, may be mailed as Standard Mail. Printed matter does not lose its character as Standard Mail when the date and name of the addressee and of the sender are written thereon. For the purposes of the Standard Mail Classification Schedule, ''printed'' does not include reproduction by handwriting or typewriting.

313 Written Additions

Standard Mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

a. Marks, numbers, name, or letters descriptive of contents;

b. ''Please Do Not Open Until Christmas,'' or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in printed matter;

g. Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;

h. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;

i. An invoice.

320 DESCRIPTION OF SUBCLASSES

321 Subclasses Limited to Mail Weighing Less than 16 Ounces

[321.1 Single Piece Subclass]

[321.11 Definition. The Single Piece subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under sections 321.2, 321.3, 321.4, 321.5 or 323.]

[321.12 Basic Rate Category. The basic rate category applies to Single Piece subclass mail not mailed under section 321.13.]

[321.13 Keys and Identification Devices Rate Category. The keys and identification devices rate category applies to keys, identification cards, identification tags, or similar identification devices mailed without cover, and which bear, contain, or have securely attached the name and complete address of a person, organization, or concern, with instructions to return to such address and a statement guaranteeing the payment of postage due on delivery.]

[321.14 Nonstandard Size Surcharge. Single Piece subclass mail, other than that mailed under section 321.13, is subject to a surcharge if it is nonstandard size mail, as defined in section 333.]

321.2 Regular Subclass

321.21 General. The Regular subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under sections [321.1,] 321.3, 321.4, 321.5 or 323.

321.22 Presort Rate Categories

321.221 General. The presort rate categories apply to Regular subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as [prescribed] *specified* by the Postal Service; and

c. Meets the machinability, addressing, and other preparation requirements [prescribed] *specified* by the Postal Service.

321.222 Basic Rate Categories. The basic rate categories apply to presort rate category mail not mailed under section 321.223.

321.223 Three- and Five-Digit Rate Categories. The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.23 Automation Rate Categories

321.231 General. The automation rate categories apply to Regular subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as [prescribed] *specified* by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service;

d. Meets the machinability, addressing, barcoding, and other preparation requirements [prescribed] *specified* by the Postal Service.

321.232 Basic Barcoded Rate Category. The basic barcoded rate category applies to letter-size automation rate category mail not mailed under section 321.233 or 321.234.

321.233 Three-Digit Barcoded Rate Category. The three-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.234 Five-Digit Barcoded Rate Category. The five-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.235 Basic Barcoded Flats Rate Category. The basic barcoded flats rate category applies to flat-size automation rate category mail not mailed under section 321.236.

321.236 Three- and Five-Digit Barcoded Flats Rate Category. The three- and five-digit barcoded flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.24 Destination Entry Discount. The destination entry discounts apply to Regular subclass mail prepared as [prescribed] *specified* by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), or sectional center facility (SCF), at which it is entered, as defined by the Postal Service.

321.25 Residual Shape Surcharge. Regular subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

321.26 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Regular subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

321.3 Enhanced Carrier Route Subclass

321.31 Definition. The Enhanced Carrier Route subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section [321.1,] 321.2, 321.4, 321.5 or 323, and that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is prepared, marked, and presented as [prescribed] *specified* by the Postal Service;

c. Is presorted to carrier routes as [prescribed] *specified* by the Postal Service;

d. Is sequenced as [prescribed] *specified* by the Postal Service; and

e. Meets the machinability, addressing, and other preparation requirements [prescribed] *specified* by the Postal Service.

321.32 Basic Rate Category. The basic rate category applies to Enhanced Carrier Route subclass mail not mailed under section 321.33, 321.34 or 321.35.

321.33 Basic Pre-Barcoded Rate Category. The basic pre-barcoded rate category applies to letter-size Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including ''correction'' digits), as *specified* [prescribed] by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements [prescribed] *specified* by the Postal Service.

321.34 High Density Rate Category. The high density rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements [prescribed] *specified* by the Postal Service.

321.35 Saturation Rate Category. The saturation rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements [prescribed] *specified* by the Postal Service.

321.36 Destination Entry Discounts. Destination entry discounts apply to Enhanced Carrier Route subclass mail prepared as [prescribed] *specified* by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

321.37 *Residual Shape Surcharge.* Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

321.38 *Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges.* Enhanced Carrier Route subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

321.4 Nonprofit Subclass

321.41 General. The Nonprofit subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section [321.1,] 321.2, 321.3, 321.5 or 323, and that is mailed by authorized nonprofit organizations or associations of the following types:

a. Religious, as defined in section 1009,

b. Educational, as defined in section 1009,

c. Scientific, as defined in section 1009,

d. Philanthropic, as defined in section 1009,

e. Agricultural, as defined in section 1009,

f. Labor, as defined in section 1009,

g. Veterans', as defined in section 1009,

h. Fraternal, as defined in section 1009,

i. Qualified political committees,

j. State or local voting registration officials when making a mailing required or authorized by the National Voter Registration Act of 1993.

321.411 Qualified Political Committees. The term ''qualified political committee'' means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee:

a. The term ''national committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

b. The term ''State committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

321.412 *Limitation on Authorization.* An organization authorized to mail at the nonprofit Standard rates for qualified nonprofit organizations may mail only its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at [special] *Nonprofit* [Standard] rates to any other person, organization or association.

321.42 Presort Rate Categories

321.421 General. The presort rate categories apply to Nonprofit subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as [prescribed] *specified* by the Postal Service; and

c. Meets the machinability, addressing, and other preparation requirements [prescribed] *specified* by the Postal Service.

321.422 *Basic Rate Categories.* The basic rate categories apply to presort rate category mail not mailed under section 321.423.

321.423 *Three- and Five-Digit Rate Categories.* The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.43 Automation Rate Categories

321.431 General. The automation rate categories apply to Nonprofit subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as [prescribed] *specified* by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service;

d. Meets the machinability, addressing, barcoding, and other preparation requirements [prescribed] *specified* by the Postal Service.

321.432 Basic Barcoded Rate Category.The basic barcoded rate category applies to letter-size automation rate category mail not mailed under section 321.433 or 321.434.

321.433 *Three-Digit Barcoded Rate Category.* The three-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.434 *Five-Digit Barcoded Rate Category.* The five-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.435 Basic Barcoded Flats Rate Category. The basic barcoded flats rate category applies to flat-size automation rate category mail not mailed under section 321.436.

321.436 *Three- and Five-Digit Barcoded Flats Rate Category.* The three- and five-digit barcoded flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

321.44 *Destination Entry Discounts.* Destination entry discounts apply to Nonprofit subclass mail prepared as [prescribed] *specified* by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility) or sectional center facility (SCF) at which it is entered, as defined by the Postal Service.

321.45 Residual Shape Surcharge. Nonprofit subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

321.46 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Nonprofit subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

321.5 Nonprofit Enhanced Carrier Route Subclass

321.51 Definition. The Nonprofit Enhanced Carrier Route subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section [321.1,] 321.2, 321.3, 321.4 or 323, that is mailed by authorized nonprofit organizations or associations (as defined in section 321.41) under the terms and limitations stated in section 321.412, and that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is prepared, marked, and presented as [prescribed] *specified* by the Postal Service;

c. Is presorted to carrier routes as [prescribed] *specified* by the Postal Service;

d. Is sequenced as [prescribed] *specified* by the Postal Service; and

e. Meets the machinability, addressing, and other preparation requirements [prescribed] *specified* by the Postal Service.

321.52 Basic Rate Category. The basic rate category applies to Nonprofit Enhanced Carrier Route subclass mail not mailed under section 321.53, 321.54 or 321.55.

321.53 Basic Pre-Barcoded Rate Category. The basic pre-barcoded rate category applies to letter-size Nonprofit Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including ''correction'' digits), as [prescribed] *specified* by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements [prescribed] *specified* by the Postal Service.

321.54 High Density Rate Category. The high density rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements [prescribed] *specified* by the Postal Service.

321.55 Saturation Rate Category. The saturation rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements [prescribed] *specified* by the Postal Service.

321.56 Destination Entry Discounts. Destination entry discounts apply to Nonprofit Enhanced Carrier Route subclass mail prepared as [prescribed] *specified* by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

321.57 Residual Shape Surcharge. Nonprofit Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

321.57 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Nonprofit Enhanced Carrier Route subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

322 Subclasses Limited to Mail Weighing 16 Ounces or More

322.1 Parcel Post Subclass

322.11 Definition. The Parcel Post subclass consists of Standard Mail weighing 16 ounces or more that is not mailed under sections *322.2,* 322.3, 323.1, or 323.2.

[322.12 Basic Rate Category. The basic rate category applies to all Parcel Post subclass mail not mailed under sections 322.13 or 322.14.]

322.12 Description of Rate Categories

322.121 Inter-BMC Rate Category. Inter-BMC Parcel Post rates apply to all Parcel Post not mailed under sections 322.122, 322.123, 322.124, or 322.125.

322.122 Intra-BMC Rate Category. Intra-BMC rates apply to Parcel Post mail originating and destinating within a designated BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.

322.123 Destination Bulk Mail Center (DBMC) Rate Category. DBMC rates apply to Parcel Post mail prepared as specified by the Postal Service in a mailing of at least 50 pieces entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

322.124 Destination Sectional Center Facility (DSCF) Rate Category. DSCF rates apply to Parcel Post mail prepared as specified by the Postal Service in a mailing of at least 50 pieces sorted to five digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

322.125 Destination Delivery Unit (DDU) Rate Category. DDU rates apply to Parcel Post mail prepared as specified by the Postal Service in a mailing of at least 50 pieces, and entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

322.13 [Reserved]

[400.0202 Bulk

Bulk parcel post mail is fourth-class parcel post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined are not mailable as bulk parcel post. Provision for mailing nonidentical pieces is set forth in section 400.046.

322.14 Destination BMC Rate Category. Parcel Post subclass mail is eligible for destination BMC rates if it is included in a mailing of at least 50 pieces deposited at the destination BMC, auxiliary service facility, or other equivalent facility, as prescribed by the Postal Service.]

322.14 Bulk Mail Center (BMC) Presort Discounts

322.141 BMC Presort Discount. The BMC presort discount applies to Inter-BMC Parcel Post mail that is prepared as specified by the Postal Service in a mailing of 50 or more pieces, entered at a facility authorized by the Postal Service, and sorted to destination BMCs, as specified by the Postal Service.

322.142 Origin Bulk Mail Center (OBMC) Discount. The Origin BMC Parcel Post discount applies to Inter-BMC Parcel Post mail that is prepared as specified by the Postal Service in a mailing of at least 50 pieces, entered at the origin BMC, and sorted to destination BMCs, as specified by the Postal Service.

[322.15 Intra-BMC Discount. Basic rate category Parcel Post subclass mail is eligible for the intra-BMC discount if it originates and destinates within the same BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico].

322.15 Barcoded Discount. The barcoded discount applies to Inter-BMC, Intra-BMC, and DBMC Parcel Post mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

322.16 Oversize Parcel Post

322.161 Excessive Length and Girth. Parcel Post pieces exceeding 108 inches in length and girth combined, but not greater than 130 inches in length and girth combined, are mailable, provided that such pieces constitute no more than 10 percent of the total number of Parcel Post pieces mailed as a part of a single mailing. If mailable, such pieces are subject to the applicable rates for the 70 pound weight increment.

322.162 Balloon Rate. Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

322.1[6]*7* Nonmachinable Surcharge. [Basic rate category Parcel Post subclass mail] *Inter-BMC Parcel Post* that does not meet machinability criteria [prescribed] *specified* by the Postal Service is subject to a nonmachinable surcharge.

322.1[7]8 Pickup Service. Pickup service is available for Parcel Post [subclass] mail under terms and conditions [prescribed] *specified* by the Postal Service.

322.19 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Parcel Post mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

322.2 *Bulk Parcel Post*

322.21 Bulk parcel post mail is Parcel Post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined or pieces measuring over 108 inches in length and girth combined are not mailable as bulk parcel post.

322.22 Barcoded Discount. The barcoded discount applies to Bulk Parcel Post mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

322.23 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Bulk Parcel Post mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

322.3 Bound Printed Matter Subclass

322.31 Definition. The Bound Printed Matter subclass consists of Standard Mail weighing at least 16 ounces, but not more than [10] *15* pounds, which:

a. Consists of advertising, promotional, directory, or editorial material, or any combination thereof;

b. Is securely bound by permanent fastenings including, but not limited to, staples, spiral bindings, glue, and stitching; loose leaf binders and similar fastenings are not considered permanent;

c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures or images or any combination of these, by any process other than handwriting or typewriting;

d. Does not have the nature of personal correspondence;

e. Is not stationery, such as pads of blank printed forms.

322.32 Single-Piece Rate Category. The single-piece rate category applies to Bound Printed Matter subclass mail which is not mailed under section 322.33 or 322.34.

322.33 Bulk Rate Category. The bulk rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces, prepared and presorted as [prescribed] *specified* by the Postal Service.

322.34 Carrier Route Presort Rate Category. The carrier route rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces of carrier route presorted mail, prepared and presorted as *specified* [prescribed] by the Postal Service.

322.35 Barcoded Discount. The barcoded discount applies to Single-Piece and Bulk Rate Bound Printed Matter that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

323 Subclasses With No 16-Ounce Limitation

323.1 Special Subclass

323.11 Definition. The Special subclass consists of Standard Mail of the following types:

a. Books, including books issued to supplement other books, of at least eight printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books. Not *more* than three of the announcements may contain as part of their format a single order form, which may also serve as a *postcard* [post card.] The order forms permitted in this subsection are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

b. 16 millimeter or narrower width films which must be positive prints in final form for viewing, and catalogs of such films, of 24 pages or more, at least 22 of which are printed, except when sent to or from commercial theaters;

c. Printed music, whether in bound form or in sheet form;

d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests and other mental and personal qualities with or without answers, test scores or identifying information recorded thereon in writing or by mark;

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings. Not more than three of the announcements permitted in this subsection may contain as part of their format a single order form, which may also serve as a *postcard* [post card.] The order forms permitted in this subsection are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

f. Playscripts and manuscripts for books, periodicals and music;

g. Printed educational reference charts, permanently processed for preservation;

h. Printed educational reference charts, including but not limited to

i. Mathematical tables,

ii. Botanical tables,

iii. Zoological tables, and

iv. Maps produced primarily for educational reference purposes;

i. Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students; and

j. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

323.12 Single-Piece Rate Category. The single-piece rate category applies to Special subclass mail not mailed under section 323.13 or 323.14.

323.13 Level A Presort Rate Category. The Level A presort rate category applies to mailings of at least 500 pieces of Special subclass mail, prepared and presorted to five-digit destination ZIP Codes as [prescribed] *specified* by the Postal Service.

323.14 Level B Presort Rate Category. The Level B presort rate category applies to mailing of at least 500 pieces of Special subclass mail, prepared and presorted to destination Bulk Mail Centers as [prescribed] *specified* by the Postal Service.

323.15 Barcoded Discount. The barcoded discount applies to Single-Piece and Level B Presort Special subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

323.2 Library Subclass

323.21 Definition.

323.211 General. The Library subclass consists of Standard Mail of the following types, separated or presorted as [prescribed] *specified* by the Postal Service:

a. Matter designated in subsection 323.213, loaned or exchanged (including cooperative processing by libraries) between:

i. Schools or colleges, or universities;

ii. Public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, or between such organizations and their members, readers or borrowers.

b. Matter designated in subsection 323.214, mailed to or from schools, colleges, universities, public libraries, museums and

herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations; or

c. Matter designated in subsection 323.215, mailed from a publisher or a distributor to a school, college, university or public library.

323.212 Definition of Nonprofit Organizations and Associations. Nonprofit organizations or associations are defined in section 1009.

323.213 Library subclass mail under section 323.211a. Matter eligible for mailing as Library subclass mail under section 323.211a consists of:

a. Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising other than incidental announcements of books;

b. Printed music, whether in bound form or in sheet form;

c. Bound volumes of academic theses in typewritten or other duplicated form;

d. Periodicals, whether bound or unbound;

e. Sound recordings;

f. Other library materials in printed, duplicated or photographic form or in the form of unpublished manuscripts; and

g. Museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interest of museums and herbaria.

323.214 Library subclass mail under section 323.211b. Matter eligible for mailing as Library subclass mail under section 323.211b consists of:

a. 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms; all of which must be positive prints in final form for viewing;

b. Sound recordings;

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria;

d. Scientific or mathematical kits, instruments or other devices;

e. Catalogs of the materials in section 323.214 a through d and guides or scripts prepared solely for use with such materials.

323.215 Library subclass mail under section 323.211c. Matter eligible for mailing as Library subclass mail under section 323.211c consists of books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

323.22 Basic Rate Category. The basic rate category applies to all Library subclass mail.

323.23 Barcoded Discount. The barcoded discount applies to Library subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

323.24 Hazardous Medical Materials and Other Mailable Hazardous Materials Surcharges. Library subclass mail containing hazardous medical materials or other mailable hazardous materials, as defined by the Postal Service, must meet the preparation requirements of the Postal Service and is subject to one or both surcharges.

330 PHYSICAL LIMITATIONS

331 Size

Except as provided in 322.161, Standard Mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual Standard Mail subclasses. The maximum size for mail presorted to carrier route in the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness. For merchandise samples mailed with detached address cards, the carrier route maximum dimensions apply to the detached address cards and not to the samples.

332 Weight

Standard Mail may not weigh more than 70 pounds. Additional weight limitations apply to individual Standard Mail subclasses.

333 Nonstandard Size Mail

Single-Piece subclass mail weighing one ounce or less is nonstandard size if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive; or

b. It exceeds any of the following dimensions:

i. 11.5 inches in length;

ii. 6.125 inches in width; or

iii. 0.25 inch in thickness.

340 POSTAGE AND PREPARATION

341 Postage

Postage must be paid as set forth in section 3000. When the postage computed at a [Single Piece,] Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route Standard rate is higher than the rate prescribed in any of the Standard subclasses listed in 322 or 323 for which the piece also qualifies (or would qualify, except for weight), the piece is eligible for the applicable lower rate. All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

342 Preparation

All pieces in a Standard mailing must be separately addressed. All pieces in a Standard mailing must be identified as [prescribed] *specified* by the Postal Service, and must contain the ZIP Code of the addressee when [prescribed] *specified* by the Postal Service. All Standard mailings must be prepared and presented as *specified* [prescribed] by the Postal Service. Two or more Standard mailings may be commingled and mailed only when specific methods approved by the Postal Service for [ascertaining] *determining* and verifying postage are followed.

343 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate as part of the same mailing only when specific methods approved by the Postal Service for [ascertaining] *determining* and verifying postage are followed.

344 Attachments and Enclosures

344.1 [Single Piece,] Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses (section 321)

344.11 General. First-Class Mail may be attached to or enclosed in Standard books, catalogs, and merchandise entered under section 321. The piece must be marked as [prescribed] *specified* by the Postal Service. Except as provided in section 344.12, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class rate for which it qualifies.

344.12 Incidental First-Class Attachments and Enclosures. First-Class Mail, as defined in section 210 b through d, may be attached to or enclosed with Standard merchandise entered under section 321, including books but excluding merchandise samples, with postage paid on the combined piece at the applicable Standard rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

344.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses (sections 322 and 323)

344.21 General. First-Class Mail or Standard Mail from any of the subclasses listed in section 321 [Single Piece,] Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route) may be attached to or enclosed in Standard Mail mailed under sections 322 and 323. The piece must be marked as [prescribed] *specified* by the Postal Service. Except as provided in sections 344.22 and 344.23, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class or section 321 Standard rate for which it qualifies (unless the rate applicable to the host piece is higher), or, if a combined piece with a section 321 Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.

344.22 Specifically Authorized Attachments and Enclosures. Standard Mail mailed under sections 322 and 323 may contain enclosures and attachments as [prescribed] *specified* by the Postal Service and as described in section 323.11 a and e, with postage paid on the combined piece at the Standard rate applicable to the host piece.

344.23 Incidental First-Class Attachments and Enclosures. First-Class Mail that meets one or more of the definitions in section 210 b through d, may be attached to or enclosed with Standard Mail mailed under section 322 or 323, with postage paid on the combined piece at the Standard rate applicable to the host piece, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

350 DEPOSIT AND DELIVERY

351 Deposit

Standard Mail must be deposited at places and times designated by the Postal Service.

352 Service

Standard Mail may receive deferred service.

353 Forwarding and Return

353.1 [Single Piece], Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses (section 321)

Undeliverable-as-addressed Standard Mail mailed under section 321 will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and Standard pieces will be returned as [prescribed] *specified* by the Postal Service. The applicable *First-Class Mail* [Single Piece Standard] rate is charged for each piece receiving return only service. Charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. The charge for those returned pieces is the appropriate *First-Class Mail* [Single Piece Standard] rate for the piece plus that rate multiplied by a factor equal to the number of section 321 Standard pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

353.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses (sections 322 and 323)

Undeliverable-as-addressed Standard Mail mailed under sections 322 and 323 will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer. Pieces which combine Standard Mail from one of the subclasses described in 322 and 323 with First-Class Mail or Standard Mail from one of the subclasses described in 321 will be forwarded if undeliverable-as-addressed, and returned if undeliverable, as *specified* [prescribed] by the Postal Service. When Standard Mail mailed under sections 322 and 323 is forwarded or returned from one post office to another, additional charges will be based on the *applicable* [appropriate] [*S*]*single* [*P*]piece Standard *Mail* rate *under 322 or 323*.

360 ANCILLARY SERVICES

361 All Subclasses

All Standard Mail will receive the following services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	*911* [SS–1]
b. Certificates of mailing indicating that a specified number of pieces have been mailed.	*947* [SS–4]

Certificates of mailing are not available for Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route subclass mail when postage is paid *with* [by] permit imprint.

362 [Single Piece,] Parcel Post, Bound Printed Matter, Special, and Library Subclasses

[Single Piece,] Parcel Post, Bound Printed Matter, Special, and Library subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Certificates of mailing	*947* [SS–4]
b. COD	*944* [SS–6]
c. Insured mail	*943* [SS–9]
d. Special handling	*952* [SS–18]
e. Return receipt (merchandise only).	*945* [SS–16]
f. Merchandise return	*932* [SS–20]
g. Delivery Confirmation	*948*

Insurance, special handling, and COD services may not be used selectively for individual pieces in a multi-piece [Parcel Post subclass] *Standard Mail* mailing unless specific methods approved by the Postal Service for [ascertaining] *determining* and verifying postage are followed.

370 RATES AND FEES

The rates and fees for Standard Mail are set forth as follows:

Service	Schedule
[a. Single Piece subclass ..	321.1]
[b.]*a.* Regular subclass	321.2
[c.]*b.* Enhanced Carrier Route subclass.	321.3
[d.]*c.* Nonprofit subclass	321.4
[e.]*d.* Nonprofit Enhanced Carrier Route subclass.	321.5
[f.]*e.*	Parcel Post subclass
[Basic]*Inter-BMC*	322.1A
Intra-BMC	*322.1B*
Destination BMC	*322.1[B]C*
Destination SCF	322.1D
Destination Delivery Unit.	*322.1E*
[g.]*f.* Bound Printed Matter subclass.	
Single__Piece	322.3A
Bulk and Carrier Route	322.3B
[h.]*g.* Special subclass	323.1
[i.]*h.* Library subclass	323.2
[j.]*i.* Fees	1000

380 AUTHORIZATIONS AND LICENSES

381 Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses

A mailing fee as set forth in [Rate] Schedule 1000 must be paid once each year by mailers of Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route subclass mail.

382 Special Subclass

A presort mailing fee as set forth in [Rate] Schedule 1000 must be paid once each year at each office of mailing by or for any person who mails presorted Special subclass mail. Any person who engages a business concern or other individuals to mail presorted Special subclass mail must pay the fee.

383 Parcel Post Subclass

A mailing fee as set forth in [Rate] Schedule 1000 must be paid once each year by mailers of Destination BMC, *Destination SCF or Destination Delivery Unit* rate category mail in the Parcel Post subclass.

PERIODICALS CLASSIFICATION SCHEDULE

410 DEFINITION

411 General Requirements

411.1 Definition. A publication may qualify for mailing under the Periodicals Classification Schedule if it meets all of the requirements in sections 411.2 through 411.5 and the requirements for one of the qualification categories in sections 412 through 415. Eligibility for specific Periodicals rates is prescribed in section 420.

411.2 Periodicals. Periodicals class mail is mailable matter consisting of newspapers and other periodical publications. The term ''periodical publications'' includes, but is not limited to:

a. Any catalog or other course listing including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education.

b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

411.3 Issuance

411.31 Regular Issuance. Periodicals class mail must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively.

411.32 Separate Publication. For purposes of determining Periodicals rate eligibility, an ''issue'' of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication, and

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. ''During the same period'' shall be defined as the periods of time ensuing between the distribution of each of the issues whose eligibility is being examined. Such separate publications must independently meet the qualifications for Periodicals eligibility.

411.4 Office of Publication. Periodicals class mail must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original entry.

411.5 Printed Sheets. Periodicals class mail must be formed of printed sheets. It may not be reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.

412 General Publications

412.1 Definition. To qualify as a General Publication, Periodicals class mail must meet the requirements in section 411 and in sections 412.2 through 412.4.

412.2 Dissemination of Information. A General Publication must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry.

412.3 Paid Circulation

412.31 Total Distribution. A General Publication must be designed primarily for paid circulation. At least 50 percent or more of the copies of the publication must be distributed to persons who have paid above a nominal rate.

412.32 List of Subscribers. A General Publication must be distributed to a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time. Copies mailed to persons who are not on a legitimate list of subscribers are nonsubscriber copies.

412.33 Nominal Rates. As used in section 412.31, nominal rate means:

a. A token subscription price that is so low that it cannot be considered a material consideration;

b. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recognized retail value, or the represented value, whichever is highest.

412.34 Nonsubscriber Copies

412.341 Up to Ten Percent. Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to subscribers during the calendar year are mailable at the rates that apply to subscriber copies provided that the nonsubscriber copies would have been eligible for those rates if mailed to subscribers.

412.342 Over Ten Percent. Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers during the calendar year which are presorted and commingled with subscriber copies are charged the applicable rates for Regular Periodicals. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to subscribers during the calendar year.

412.35 Advertiser's Proof Copies. One complete copy of each issue of a General Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to subscriber copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as subscriber copies.

412.36 Expired Subscriptions. For six months after a subscription has expired, copies of a General Publication may be mailed to a former subscriber at the rates that apply to copies mailed to subscribers, if the publisher has attempted during that six months to obtain payment, or a promise to pay, for renewal. These copies do not count as subscriber copies.

412.4 Advertising Purposes

A General Publication may not be designed primarily for advertising purposes. A publication is ''designed primarily for advertising purposes'' if it:

a. Has advertising in excess of 75 percent in more than one-half of its issues during any 12-month period;

b. Is owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it;

c. Consists principally of advertising and editorial write-ups of the advertisers;

d. Consists principally of advertising and has only a token list of subscribers, the circulation being mainly free;

e. Has only a token list of subscribers and prints advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers; or

f. Is published under a license from individuals or institutions and features other businesses of the licensor.

413 Requester Publications

413.1 Definition. A publication which is circulated free or mainly free may qualify for Periodicals class as a Requester Publication if it meets the requirements in sections 411, and 413.2 through 413.4.

413.2 Minimum Pages. It must contain at least 24 pages.

413.3 Advertising Purposes

413.31 Advertising Percentage. It must devote at least 25 percent of its pages to nonadvertising and not more than 75 percent to advertisements.

413.32 Ownership and Control. It must not be owned or controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it.

413.4 Circulated to Requesters

413.41 List of Requesters. It must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for, including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration.

413.42 Nonrequester Copies

413.421 Up to Ten Percent. Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to requesters during the calendar year are mailable at the rates that apply to requester copies provided that the nonrequester copies would have been eligible for those rates if mailed to requesters.

413.422 Over Ten Percent. Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to requesters during the calendar year which are presorted and commingled with requester copies are charged the applicable rates for Regular Periodicals. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to requesters during the calendar year.

413.43 Advertiser's Proof Copies. One complete copy of each issue of a Requester Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to requester copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as requester copies.

414 Publications of Institutions and Societies

414.1 Publisher's Own Advertising. Except as provided in section 414.2, a publication which meets the requirements of sections 411 and 412.4, and which contains no advertising other than that of the publisher, qualifies for Periodicals class as a publication of an institution or society if it is:

a. Published by a regularly incorporated institution of learning;

b. Published by a regularly established state institution of learning supported in whole or in part by public taxation;

c. A bulletin issued by a state board of health or a state industrial development agency;

d. A bulletin issued by a state conservation or fish and game agency or department;

e. A bulletin issued by a state board or department of public charities and corrections;

f. Published by a public or nonprofit private elementary or secondary institution of learning or its administrative or governing body;

g. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof, or by a nonprofit educational radio or television station;

h. Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons;

i. Published by or under the auspices of a trade(s) union;

j. Published by a strictly professional, literary, historical, or scientific society; or,

k. Published by a church or church organization.

414.2 General Advertising. A publication published by an institution or society identified in sections 414.1 h through k, may contain advertising of other persons, institutions, or concerns, if the following additional conditions are met:

a. The publication is originated and published to further the objectives and purposes of the society;

b. Circulation is limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers; and

iii. Exchange copies.

c. The circulation of nonsubscriber copies, including sample and complimentary copies, does not exceed 10 percent of the total number of copies referred to in 414.2b.

415 Publications of State Departments of Agriculture

A publication which is issued by a state department of agriculture and which meets the requirements of sections 411 qualifies for Periodicals class as a publication of a state department of agriculture if it contains no advertising and is published for the purpose of furthering the objects of the department.

416 Foreign Publications

Foreign newspapers and other periodicals of the same general character as domestic publications entered as Periodicals class mail may be accepted on application of the publishers thereof or their agents, for transmission through the mail at the same rates as if published in the United States. This section does not authorize the transmission through the mail of a publication which violates a copyright granted by the United States.

420 DESCRIPTION OF SUBCLASSES

421 Regular Subclass

421.1 Definition. The Regular subclass consists of Periodicals class mail that is not mailed under section 423 and that:

a. Is presorted, marked, and presented as *specified* [prescribed] by the Postal Service; and

b. Meets machinability, addressing, and other preparation requirements [prescribed] *specified* by the Postal Service.

421.2 Regular Pound Rates

An unzoned pound rate applies to the nonadvertising portion of Regular subclass mail. A zoned pound rate applies to the advertising portion and may be reduced by applicable destination entry discounts. The pound rate postage is the sum of the nonadvertising portion charge and the advertising portion charge.

421.3 Regular Piece Rates

421.31 Basic Rate Category. The basic rate category applies to all Regular subclass mail not mailed under section 421.32, [or] 421.33, *or 421.34.*

421.32 Three [-Digit City and Five]-Digit Rate Category. The *three digit rate category applies* [rates for this category apply] to Regular subclass mail presorted to [three-digit cities and five-digit] *single or multiple three-digit* ZIP Code destinations as [prescribed] *specified* by the Postal Service.

421.33 *Five[-]Digit Rate Category. The five-digit rate category applies to Regular subclass mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.*

421.34 Carrier Route Rate Category. The carrier route rate category applies to Regular subclass mail presorted to carrier routes as [prescribed] *specified* by the Postal Service.

421.4 Regular Subclass Discounts

421.41 Barcoded Letter Discounts. Barcoded letter discounts apply to letter size Regular subclass mail mailed under sections 421.31, [and] 421.32, *and 421.33* which bears a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements [prescribed] *specified* by the Postal Service.

421.42 Barcoded Flats Discounts. Barcoded flats discounts apply to flat size Regular subclass mail mailed under sections 421.31 [and] 421.32, *and 421.33* which bear a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements *specified* [prescribed] by the Postal Service.

421.43 High Density Discount. The high density discount applies to Regular subclass mail mailed under section [421.33] *421.34,* presented in walk-sequence order, and meeting the high density and preparation requirements *specified* [prescribed] by the Postal Service.

421.44 Saturation Discount. The saturation discount applies to Regular subclass mail mailed under section [421.33] *421.34,* presented in walk-sequence order, and meeting the saturation and preparation requirements *specified* [prescribed] by the Postal Service.

421.45 Destination Entry Discounts. Destination entry discounts apply to Regular subclass mail which is destined for delivery within the service area of the destination sectional center facility (SCF) or the destination delivery unit (DDU) in which it is entered, as defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.

421.46 Nonadvertising Discount. The nonadvertising discount applies to all Regular subclass mail and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

422 [Reserved]

423 Preferred Rate Periodicals

423.1 Definition. Periodicals class mail, other than publications qualifying as Requester Publications, may qualify for Preferred Rate Periodicals rates if it meets the applicable requirements for those rates in sections 423.2 through 423.5.

423.2 Within County Subclass

423.21 Definition. Within County mail consists of Preferred Rate Periodicals class mail mailed in, and addressed for delivery within, the county where published and originally entered, from either the office of original entry or additional entry. In addition, a Within County publication must meet one of the following conditions:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half [of] the total paid circulation of such issue.

423.22 Entry in an Incorporated City. For the purpose of determining eligibility for Within County mail, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

423.3 Nonprofit Subclass

Nonprofit mail is Preferred Rate Periodicals class mail entered by authorized nonprofit organizations or associations of the following types:

a. Religious, as defined in section 1009,

b. Educational, as defined in section 1009,

c. Scientific, as defined in section 1009,

d. Philanthropic, as defined in section 1009,

e. Agricultural, as defined in section 1009,

f. Labor, as defined in section 1009,

g. Veterans'', as defined in section 1009,

h. Fraternal, as defined in section 1009, and

i. Associations of rural electric cooperatives,

j. One publication, which contains no advertising (except advertising of the

publisher) published by the official highway or development agency of a state,

k. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station.

l. One conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.

423.4 Classroom Subclass

Classroom mail is Preferred Rate Periodicals class mail which consists of religious, educational, or scientific publications designed specifically for use in school classrooms or religious instruction classes.

423.5 Science of Agriculture

Science of Agriculture mail consists of Preferred Rate Periodicals class mail devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.

423.6 Preferred Rate Pound Rates

For Preferred Rate Periodicals entered under sections 423.3, 423.4 and 423.5, an unzoned pound rate applies to the nonadvertising portion. A zoned pound rate applies to the advertising portion and may be reduced by applicable destination entry discounts. The pound rate postage is the sum of the nonadvertising portion charge and the advertising portion charge. For Preferred Rate Periodicals entered under section 423.2, one pound rate applies to the pieces presorted to carrier route to be delivered within the delivery area of the originating post office, and another pound rate applies to all other pieces.

423.7 Preferred Rate Piece Rates

423.71 Basic Rate Category. The basic rate category applies to all Preferred Rate Periodicals not mailed under section 423.72, [or] 423.73, or *423.74.*

423.72 Three-[digit City and Five]-Digit Rate Category. The *three-digit rate category applies* [rates for this category apply] to Preferred Rate Periodicals entered under sections *423.2,* 423.3, 423.4, or 423.5 that are presorted to *single or multiple* three-digit [cities and five-digit] ZIP [*c*] *Code* destinations as [prescribed] *specified* by the Postal Service.

423.73 *Five [-]Digit Rate Category. The five-digit rate category applies to Preferred Rate Periodicals entered under sections 423.2, 423.3, 423,4, or 423.5 that are presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.*

423.74 Carrier Route Rate Category. The carrier route rate category applies to Preferred Rate Periodicals presorted to carrier routes as [prescribed] *specified* by the Postal Service.

423.8 Preferred Rate Discounts

423.81 Barcoded Letter Discounts. Barcoded letter discounts apply to letter size Preferred Rate Periodicals mailed under sections 423.71, [and] 423.72, *and 423.73* which bear a barcode representing not more than 11 digits (not including ''correction'' digits) as *specified* [prescribed] by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements [prescribed] *specified* by the Postal Service.

423.82 Barcoded Flats Discounts. Barcoded flats discounts apply to flat size Preferred Rate Periodicals mailed under sections 423.71, [and] 423.72, *and 423.73* which bear a barcode representing not more than 11 digits (not including ''correction'' digits) as [prescribed] *specified* by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements [prescribed] *specified* by the Postal Service.

423.83 High Density Discount. The high density discount applies to Preferred Rate Periodicals mailed under section [423.73] *423.74,* presented in walk-sequence order, and meeting the high density and preparation requirements [prescribed] *specified* by the Postal Service.

423.84 Saturation Discount. The saturation discount applies to Preferred Rate Periodicals mailed under section [423.73] *423.74,* presented in walk-sequence order, and meeting the saturation and preparation requirements [*prescribed*] *specified* by the Postal Service.

423.85 Destination Entry Discounts. Destination entry discounts apply to Preferred Rate Periodicals which are destined for delivery within the service area of the destination sectional center facility (SCF) or the destination delivery unit (DDU) in which they are entered, as defined by the Postal Service. the DDU discount only applies to Carrier Route rate category mail; the SCF discount is not available for mail entered under section 423.2.

423.86 Nonadvertising Discount. The nonadvertising discount applies to Preferred Rate Periodicals entered under sections 423.3, 423.4, 423.5 and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedules 421, 423.3 or 423.4 and subtracting that amount from the applicable piece rate.

430 PHYSICAL LIMITATIONS

There are no maximum size or weight limits for Periodicals class mail.

440 POSTAGE AND PREPARATION

441 Postage. Postage must be paid on Periodicals class mail as set forth in section 3000.

442 Presortation. Periodicals class mail must be presorted [in accordance with] *under* regulations [prescribed] *specified* by the Postal Service.

443 Attachments and Enclosures

443.1 General. First-Class Mail or Standard Mail from any of the subclasses listed in section 321 [(Single Piece,] Regular, Enhanced Carrier Route or Nonprofit) may be attached to or enclosed with Periodicals class mail. The piece must be marked as [prescribed] *specified* by the Postal Service. Except as provided in section 443.2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the appropriate First-Class or section 321 Standard Mail rate for which it qualifies (unless the rate applicable to the host piece is higher), or, if a combined piece with a section 321 Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.

443.2 Incidental First-Class Mail Attachments and Enclosures. First-Class Mail that meets one or more of the definitions in sections 210 b through d may be attached to or enclosed with Periodicals class mail, with postage paid on the combined piece at the applicable Periodicals rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

444 Identification

Periodicals class mail must be identified as required by the Postal Service. Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

445 Filing of Information

Information relating to Periodicals class mail must be filed with the Postal Service [in accordance with] *under* 39 U.S.C. 3685.

446 Enclosures and Supplements

Periodicals class mail may contain enclosures and supplements as [prescribed] *specified* by the Postal Service. An enclosure or supplement may not contain writing, printing or sign thereof or therein, in addition to the original print, except as authorized by the Postal Service, or as authorized under section 443.2.

450 DEPOSIT AND DELIVERY

451 Deposit

Periodicals class mail must be deposited at places and times designated by the Postal Service.

452 Service

Periodicals class mail is given expeditious handling insofar as is practicable.

453 Forwarding and Return

Undeliverable-as-addressed Periodicals class mail will be forwarded or returned to the mailer, as [prescribed] *specified* by the Postal Service. Undeliverable-as-addressed combined First-Class and Periodicals class mail pieces will be forwarded or returned, as [prescribed] *specified* by the Postal Service. Additional charges when Periodicals class mail is returned will be based on the applicable [Standard] *First-Class* Mail rate.

470 RATES AND FEES

The rates and fees for Periodicals class mail are set forth as follows:

Service	Schedule
a. Regular	421.0
b. Within County	423.2
c. Nonprofit	423.3
d. Classroom	423.4
e. Science of Agriculture	421.0
f. Fees	1000.0

480 AUTHORIZATIONS AND LICENSES

481 Entry Authorizations

Prior to mailing at Periodicals rates, a publication must be authorized for entry as Periodicals class mail by the Postal Service. Each authorized publication will be granted one original entry authorization at the post office where the office of publication is maintained. An authorization for the establishment of an account to enter a publication at an additional entry office may be granted by the Postal Service upon application by the publisher. An application for re-entry must be made whenever the publisher proposes to change the publication's title, frequency of issue or office of original entry.

482 Preferred Rate Authorization

Prior to mailing at Nonprofit, Classroom, and Science of Agriculture rates, a publication must obtain an additional Postal Service entry authorization to mail at those rates.

483 Mailing by Publishers and News Agents

Periodicals class mail may be mailed only by publishers or registered news agents. A news agent is a person or concern engaged in selling two or more Periodicals publications published by more than one publisher. News agents must register at all post offices at which they mail Periodicals class mail.

484 Fees

Fees for original entry, additional entry, re-entry, and registration of a news agent are set forth in [Rate] Schedule 1000.

Renumber and amend Special Service Classification Schedules SS—1–6, SS—8–16, and SS—18–20 as follows:

Special Services

910 ADDRESSING

911 ADDRESS CORRECTION SERVICE

911.1 Definition

911.11 Address correction service is a service which provides the mailer with a method of obtaining the correct address, if available to the Postal Service, of the addressee or the reason for nondelivery.

911.2 Description of Service

911.21 Address correction service is available to mailers of postage prepaid mail of all classes. Periodicals class mail will receive address correction service.

911.22 Address correction service is not available for items addressed for delivery by military personnel at any military installation.

911.23 Address correction provides the following service to the mailer:

a. If the correct address is known to the Postal Service, the mailer is notified of both the old and the correct address.

b. If the item mailed cannot be delivered, the mailer will be notified of the reason for nondelivery.

911.3 Requirements of the Mailer

911.31 Mail, other than Periodicals class mail, sent under this classification schedule must bear a request for address correction service.

911.4 Fees

911.41 There is no charge for address correction service when the correction is provided incidental to the return of the [mail piece] *mailpiece* to the sender.

911.42 A fee, as set forth in [Rate] *Fee* Schedule [SS–1] *911,* is charged for all other forms of address correction service.

912 MAILING LIST SERVICES

912.1 Definition

912.11 Mailing list services include:

a. Correction of mailing lists;

b. [Change of address] *Change-of-address* information for election boards and registration commissions;

c. ZIP coding of mailing lists; and

d. Arrangement of address cards in the sequence of delivery.

912.12 Correction of mailing list service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists.

912.13 ZIP coding of mailing lists service is a service identifying ZIP [*c*]*Code* addresses in areas served by multi-ZIP coded postal facilities.

912.2 Description of Service

912.21 Correction of mailing list service is available only to the following owners of name and address or occupant mailing lists:

a. Members of Congress

b. Federal agencies

c. State government departments

d. Municipalities

e. Religious organizations

f. Fraternal organizations

g. Recognized charitable organizations

h. Concerns or persons who solicit business by mail

921.22 The following corrections will be made to name and address lists:

a. Names to which mail cannot be delivered or forwarded will be deleted;

b. Incorrect house, rural, or post office box numbers will be corrected;

c. When permanent forwarding orders are on file for customers who have moved, new addresses including ZIP [c] *C*odes will be furnished;

d. New names will not be added to the list.

912.23 The following corrections will be made to occupant lists:

a. Numbers representing incorrect or non-existent street addresses will be deleted;

b. Business or rural route addresses will be distinguished if known;

c. Corrected cards or sheets will be grouped by route;

d. Street address numbers will not be added or changed.

912.24 Corrected lists will be returned to customers at no additional charge.

912.25 Residential change-of-address information is available only to election boards or registration commissions for obtaining, if known to the Postal Service, the current address of an addressee.

912.26 ZIP coding or mailing list service provides that addresses will be sorted to the finest possible ZIP [c] *C*ode sortation.

912.27 Gummed labels, wrappers, envelopes, [or] Stamped Cards, or [post cards] *postcards* indicative of one-time use will not be accepted as mailing lists.

912.28 Sequencing of address cards service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.

912.3 Requirements of Customer

912.31 A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as [prescribed] *specified* by [regulation] *the Postal Service.*

912.4 Fees

912.41 The fees for mailing list services are set forth in [Rate] *Fee* Schedule[s] *912* [SS–11a, SS–11b, SS–11c and SS–11d.]

920 DELIVERY ALTERNATIVES

921 POST OFFICE BOX AND CALLER SERVICE

921.1 Caller Service

921.11 Definition

921.111 Caller service is a service which permits a customer to obtain mail addressed to the customer's box number through a call window or loading dock.

921.12 Description of Service

921.121 Caller service uses post office box numbers as the address medium but does not actually use a post office box.

921.122 Caller service is not available at certain postal facilities.

921.123 Caller service is provided to customers on the basis of mail volume received and number of post office boxes used at any one facility.

921.124 A customer may reserve a caller number.

921.125 Caller service cannot be used when the sole purpose is, by subsequently filing [change of address] *change-of-address* orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

921.13 Fees

921.131 Fees for caller service are set forth in [Rate] *Fee* Schedule *921.* [SS–10.]

922.2 Post Office Box Service

922.21 Definition

922.211 Post office box service is a service which provides the customer with a private, locked receptacle for the receipt of mail during the hours when the lobby of a postal facility is open.

922.22 Description of Service

922.221 The Postal Service may limit the number of post office boxes occupied by any one customer.

922.222 A post office [box holder] *boxholder* may ask the Postal Service to deliver to the post office box all mail properly addressed to the holder. If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, [in accordance with] *under* existing regulations.

922.223 Post office box service cannot be used when the sole purpose is, by subsequently filing [change of address] *change-of-address* orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

922.23 Fees

922.231 Fees for post office box service are set forth in [Rate] *Fee* Schedule *922*. [SS–10.]

922.232 In postal facilities primarily serving academic institutions or the students of such institutions, fees for post office boxes are:

Period of box use	Fee
95 days or less	½ semi-annual fee.
96 to 140 days	¾ semi-annual fee.
141 to 190 days	Full semi-annual fee.
191 to 230 days	1¼ semi-annual fee.
231 to 270 days	1½ semi-annual fee.
271 days to full year	Full annual fee.

922.233 No refunds will be made for post office box fees paid under section *922.32*. [10.031.] For purposes of this classification schedule [SS–10], the full annual fee is twice the amount of the semi-annual fee.

930 PAYMENT ALTERNATIVES

931 BUSINESS REPLY MAIL

931.1 Definitions

931.11 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12 A business reply mail piece is nonletter-size for purposes of Classification Schedule *931* [SS–2] if it meets addressing and other preparation requirements, but does not meet the machinability requirements [prescribed] *specified* by the Postal Service for mechanized or automated letter sortation.

This provision expires June 7, 1999.

931.2 Description of Service

931.21 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3 Requirements of the Mailer

931.31 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

931.4 Fees

931.41 The fees for business reply mail are set forth in [Rate] *Fee* Schedule *931* [SS–2.]

931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

931.43 An accounting fee as set forth in [Rate] *Fee* Schedule *931* [SS–2] must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

931.5 Experimental Reverse Manifest Fees

931.51 A set-up/qualification fee as set forth in [Rate] *Fee* Schedule *931* [SS–2] must be paid by each business reply mail advance deposit trust account holder at each destination postal facility at which it applies to receive nonletter-size business reply mail for which the postage and fees will be accounted for through a reverse manifest method approved by the Postal Service for [ascertaining] *determining* and verifying postage.

A distributor must pay this fee for each business reply mail advance deposit trust account for which participation in the nonletter-size business reply mail experiment is requested.

This provision expires June 7, 1999.

931.52 A nonletter-size reverse manifest monthly fee as set forth in [Rate] *Fee* Schedule *931* [SS–2] must be paid each month during which the distributor's reverse manifest account is active.

This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the reverse manifest nonletter-size business reply mail experiment and which utilize reverse manifest accounting methods approved by the Postal Service for [ascertaining] *determining* and verifying postage and fees.

This provision expires June 7, 1999.

931.6 Experimental Weight Averaging Fees

931.61 A set-up/qualification fee as set forth in [Rate] *Fee* Schedule *931* [SS–2] must be paid by each business reply mail advance deposit trust account holder at each destination postal facility at which it applies to receive nonletter-size business reply mail for which the postage and fees will be accounted for through a weight averaging method approved by the Postal Service for [ascertaining] *determining* and verifying postage.

A distributor must pay this fee for each business reply mail advance deposit trust account for which participation in the nonletter-size business reply mail experiment is requested.

This provision expires June 7, 1999.

931.62 A nonletter-size weight averaging monthly fee as set forth in [Rate] *Fee* Schedule *931* [SS–2] must be paid each month during which the distributor's weight averaging account is active.

This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment.

This provision expires June 7, 1999.

931.7 Authorizations and Licenses

931.71 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in [Rate] *Fee* Schedule *931* [SS–2].

931.72 Except as provided in section *931.73* [2.0502], the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.73 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

931.74 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes [which] *that* do not conform to prescribed form, style or size.

931.75 Authorization to pay experimental nonletter-size business reply mail fees as set forth in [Rate] *Fee* Schedule *931*. [SS–2] may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards [prescribed] *specified* by the Postal Service for the applicable reverse manifest or weight averaging accounting method.

This provision expires June 7, 1999.

932 MERCHANDISE RETURN SERVICE

932.1 Definition

932.11 Merchandise return service provides a method whereby a shipper may authorize its customers to return a parcel with the postage paid by the shipper. A shipper is the holder of a merchandise return permit.

932.2 Description of Service

932.21 Merchandise return service is available to all shippers who obtain the necessary permit and who guarantee payment of postage and fees for all returned parcels.

932.22 Merchandise return service is available for the return of any parcel under the following classification schedules.

a. First-Class Mail

b. Standard Mail

932.3 Requirements of the Mailer

932.31 Merchandise return labels must be prepared at the shipper's expense to specifications set forth by the Postal Service.

932.32 The shipper must furnish its customer with an appropriate merchandise return label.

932.4 Other Services

932.41 The following services may be purchased in conjunction with Merchandise Return Service:

Classification schedule	
a. Certificate of mailing	*947* [SS–4]
b. Insured mail	*943* [SS–9]
c. Registered mail	*942* [SS–14]
d. Special handling	*952* [SS–18]

932.42 Only the shipper may purchase insurance service for the merchandise return parcel by indicating the amount of insurance on the merchandise return label before providing it to the customer. The customer who returns a parcel to the shipper under merchandise return service may not purchase insurance.

932.5 Fees

932.51 The fee for the merchandise return service is set forth in [Rate] *Fee* Schedule *932*. [SS–20]. This fee is paid by the shipper.

932.6 Authorizations and Licenses

932.61 A permit fee as set forth in [Rate] Schedule 1000 must be paid once each calendar year by shippers utilizing merchandise return service.

932.62 The merchandise return permit may be canceled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

933 ON-SITE METER SETTING

933.1 Definition

933.11 On-site meter setting or examination service is a service whereby the Postal Service will service a postage meter at the mailer's or meter manufacturer's premises.

933.2 Description of Service

933.21 On-site meter setting or examination service is available on a scheduled basis, and meter setting may be [done] *performed* on an emergency basis for those customers enrolled in the scheduled on-site meter setting or examination program.

933.3 Fees

933.31 The fees for on-site meter setting or examination service are set forth in [Rate] *Fee* Schedule *933* [SS–12].

934 PREPAID REPLY MAIL

934.1 Definition

934.11 Prepaid reply mail is a service whereby letter-size reply cards and envelopes may be distributed by or for a prepaid reply mail distributor for use by mailers for sending First-Class Mail reply letters or cards on which postage is prepaid by the distributor. A distributor is the holder of a prepaid reply mail license.

934.2 Description of Service

When paying postage on outgoing mail pieces which contain reply cards and letters to be returned by mail under the terms of this section, the distributor simultaneously pays postage on reply cards and letters anticipated in response to those outgoing pieces.

934.3 Requirements of the Mailer

934.31 Prepaid reply cards and envelopes must be preaddressed and bear prepaid reply mail markings.

934.32 Handwriting, typewriting, or other handstamping are not acceptable methods of preaddressing or marking prepaid reply cards and envelopes.

934.4 Fees

934.41 To qualify as an active prepaid reply mail account, the account must be used solely for prepaid reply mail and contain a balance sufficient to cover postage for returned prepaid reply mail.

934.42 A monthly accounting fee as set forth in Fee Schedule 934 must be paid each month for each prepaid reply mail account at each facility where the mail is returned.

934.5 Authorizations and Licenses

934.51 In order to distribute prepaid reply mail cards and envelopes, the distributor must obtain a license or licenses from the Postal Service and pay an annual permit fee as set forth in Fee Schedule 934.

934.52 Except as provided in section 934.53, the license to distribute prepaid reply mail cards and envelopes must be obtained at each office from which the mail is offered for delivery.

934.53 If the prepaid reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all prepaid reply mail.

934.54 The license to mail prepaid reply mail may be canceled for failure to pay prepaid reply mail postage and monthly fees when due, and for distributing business reply cards and envelopes which do not conform to prescribed form, style, size, or thickness.

940 ACCOUNTABILITY & RECEIPTS

941 CERTIFIED MAIL

941.1 Definition

941.11 Certified mail service is a service that provides a mailing receipt to the sender and a record of delivery at the office of *delivery*[address].

941.2 Description of Service

941.21 Certified mail service is provided for matter mailed as First-Class Mail.

941.22 If requested by the mailer, the time of acceptance[s] by the Postal Service will be indicated on the receipt.

941.23 A record of delivery is retained at the office of delivery for a specified period of time.

941.24 If the initial attempt to delivery mail is not successful, a notice of [arrival] *attempted delivery* is left at the mailing address.

941.25 A receipt of mailing may be obtained only if the article is mailed at a post office, branch or station, or given to a rural carrier.

941.26 Additional copies of the original mailing receipt may be obtained by the mailer.

941.3 Deposit of Mail

941.31 Certified mail must be deposited in a manner specified by the Postal Service.

941.4 Other Services

941.41 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Classification schedule
a. Restricted delivery	*946* [SS–15]
b. Return receipt ...	*945* [SS–16]

941.5 Fees

941.51 The fees for certified mail service are set forth in [Rate] *Fee* Schedule *941*. [SS–5.]

942 REGISTERED MAIL

942.1 Definition

942.11 Registered mail is a service that [which] provides added protection to mail sent under *the[is]* Domestic Mail Classification Schedule[ ]and indemnity in case of loss or damage.

942.2 Description of Service

942.21 Registered mail service is available to mailers of prepaid mail sent as First-Class Mail except that registered mail must meet the minimum requirements for length and width regardless of thickness.

942.22 Registered mail service provides insurance up to a maximum of $25,000, depending upon the actual value at the time of mailing, except that insurance is not available for articles of no value. [optional for articles valued $100 or less.]

942.23 There is no limit on the value of articles sent under this classification schedule.

942.24 Registered mail service is not available for:

a. All delivery points because of the high security required for registered mail; in addition, not all delivery points will be available for registry and liability is limited in some geographic areas[.]*;*

b. Mail of any class sent in combination with First-Class Mail;

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

942.25 The following services are provided as part of registered mail service at no additional cost to the mailer:

a. A receipt;

b. A record of delivery, retained by the Postal Service for a specified period of time;

c. A notice of arrival will be left at the mailing address if the initial delivery attempt is unsuccessful;

d. When registered mail is undeliverable-as-addressed and cannot be forwarded, a notice of nondelivery is provided.

942.26 A claim for complete loss of insured articles may be filed by the mailer only. A claim for damage or for partial loss of insured articles may be filed by either the mailer or addressee.

942.27 Indemnity claims for registered mail [on which insurance is provided, or for articles valued $100 or less on which optional insurance has been elected], must be filed within a [specified] period of time*, specified by the Postal Service,* from the date the article was mailed.

[942.28 No indemnity is paid on any matter registered free.]

942.3 Deposit of Mail

942.31 Registered mail must be deposited in a manner specified by the Postal Service.

942.4 Service

942.41 Registered mail is provided maximum security.

942.5 Forwarding and Return

942.51 Registered mail is forwarded and returned without additional registry charge.

942.6 Other Services

942.61 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Classification schedule
a. Collect on delivery	*944* [SS–6]
b. Restricted delivery	*946* [SS–15]
c. Return receipt	*945* [SS–16]
d. Merchandise return (shippers only).	*932* [SS–20]

942.7 Fees

942.71 The fees for registered mail are set forth in [Rate] *Fee* Schedule 942. [SS–14.]

943 INSURANCE

943.1 Express Mail Insurance

943.11 Definition

943.111 Express Mail Insurance is a service that provides the mailer with indemnity for loss of, rifling of, or damage to items sent by Express Mail.

943.12 Description of Service

943.121 Express Mail Insurance is available only for Express Mail.

943.122 Insurance coverage is provided, for no additional charge, up to $500 per piece for document reconstruction, up to $5,000 per occurrence regardless of the number of claimants. Insurance coverage is also provided, for no additional charge, up to $500 per piece for merchandise. Insurance coverage for merchandise valued at more than $500 is available for an additional fee, as set forth in [Rate] *Fee* Schedule 943 [SS–9]. The maximum liability for merchandise is $5,000 per piece. For negotiable items, currency, or bullion, the maximum liability is $15.

943.123 Indemnity claims for Express Mail must be filed within a specified period of time from the date the article was mailed.

943.124 Indemnity will be paid under terms and conditions [prescribed] specified by the Postal Service.

943.125 Among other limitations [prescribed] specified by the Postal Service, indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Due to seizure by any agency of government; or,

d. Due to war, insurrection or civil disturbances.

943.13 Fees

943.131 The fees for Express Mail Insurance service are set forth in [Rate] Fee Schedule *943*.[SS–9.]

943.2 General Insurance

943.21 Retail Insurance

943.211 [General] *Retail* Insurance is a service that provides the mailer with indemnity for loss of, rifling of, or damage to mailed items.

943.212 The maximum liability of the Postal Service [under this part] for *Retail Insurance* is $5000.

943.213 [General] *Retail* Insurance is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter [which] *that* may be mailed as Standard Mail

b. [Single Piece,] Parcel Post, Bound Printed Matter, Special, and Library Standard Mail

943.214 [This service] *Retail Insurance* is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

943.215 For Retail Insurance, the [The] mailer is issued a receipt for each item mailed. For items insured for more than $50, a receipt of delivery is obtained by the Postal Service.

943.216 For items insured for more than $50, a notice of arrival is left at the mailing address when the first attempt at delivery is unsuccessful.

943.217 Retail insurance provides indemnity for the actual value of the article at the time of mailing.

943.22 Bulk Insurance

943.221 Bulk insurance service is available for mail entered in bulk at designated facilities and in a manner specified by the Postal Service and sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail,

b. Parcel Post, Bound Printed Matter, Special, and Library subclass mail

943.222 Bulk insurance bears endorsements and identifiers specified by the Postal Service. Bulk insurance mailers must meet the documentation requirements of the Postal Service.

943.223 Bulk insurance provides indemnity for the lesser of (1) the actual value of the article at the time of mailing, or (2) the wholesale cost of the contents to the sender.

943.23 Claims

943.231 For Retail Insurance, a [A] claim for complete loss may be filed by the mailer only,[.] *and a* [A] claim for damage or for partial loss may be filed by either the mailer or addressee. *For bulk insurance, all claims must be filed by the mailer.*

943.232 A claim for damage or loss on a parcel sent merchandise return *under classification schedule 932* [(SS–20)] may only be filed by the purchaser of the insurance.

943.233 Indemnity claims must be filed within a specified period of time from the date the article was mailed.

[943.234 Additional copies of the original mailing receipt may be obtained by the mailer, upon payment of the applicable fee set forth in Rate Schedule SS–9.]

943.24 Deposit of Mail

943.241 Retail and Bulk Insured Mail [insured under this part] must be deposited [in a manner] *as* specified by the Postal Service.

943.25 Forwarding and Return

943.251 By insuring an item, the mailer guarantees forwarding and return postage unless instructions on the piece mailed indicate that it not be forwarded or returned.

943.252 Mail undeliverable as addressed sent under this part will be returned to the sender as specified by the sender or by the Postal Service.

943.26 Other Services

943.261 The following services, if applicable to the *sub*class of mail, may be obtained in conjunction with mail sent under this part upon payment of the applicable fees:

Service	Classification schedule
a. Parcel Airlift *9*	51 [SS–13]
b. Restricted delivery (for items insured for more than $50)	*946* [SS–15]
c. Return receipt (for items insured for more than $50)	*945* [SS–16]
d. Special handling	*952* [SS–18]
e. Merchandise return (shippers only).	*932* [SS–20]

943.27 Fees

943.271 The fees for [General] Insurance are set forth in [Rate] *Fee* Schedule *943*. [SS–9.]

944 COLLECT ON DELIVERY

944.1 Definition

944.11 Collect on Delivery (COD) service is a service [which] *that* allows a mailer to mail an article for which [he has not been paid*] full or partial payment has not yet been received* and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

944.2 Description of Service

944.21 COD service is available for collection of $600 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

a. Express Mail

b. First-Class Mail

c. [Single Piece,] Parcel Post, Bound Printed Matter, Special, and Library Standard Mail

944.22 Service under this schedule is not available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate COD shipment consisting of merchandise or bill of lading, is being mailed, the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges;

e. Goods *that* [which] have not been ordered by the addressee.

944.23 COD service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only the receipt of the instrument issued to the mailer after payment of COD charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

944.24 A receipt is issued to the mailer for each piece of COD mail. Additional copies of the original mailing receipt may be obtained by the mailer.

944.25 Delivery of COD mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of arrival will be left at the mailing address.

944.26 The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

944.27 The mailer may designate a new addressee or alter the COD charges by submitting the appropriate form and by paying the appropriate fee as set forth in [Rate] *Fee* Schedule *944*. [SS–6.]

944.28 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

944.29 COD indemnity claims must be filed within a specified period of time from the date the article was mailed.

944.3 Requirements of the Mailer

944.31 COD mail must be identified as COD mail.

944.4 Deposit of Mail

944.41 COD mail must be deposited in a manner specified by the Postal Service.

944.5 Forwarding and Return

944.51 A mailer of COD mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

944.52 For COD mail sent as Standard Mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of COD mail [which] that was refused when first offered for delivery;

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

944.6 Other Services

944.61 The following services, if applicable to the *sub*class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fee:

Service	Classification schedule
a. Registered mail, if sent as First-Class.	*942* [SS–14]
b. Restricted delivery	*946* [SS–15]
c. Special handling	*952* [SS–18]

944.7 Fees

944.71 Fees for COD service are set forth in [Rate] *Fee* Schedule *944* [SS–6.]

945 RETURN RECEIPT

945.1 Definition

945.11 Return receipt service is a service *that* [which] provides evidence to the mailer that an article has been received at the delivery address.

945.2 Description of Service

945.21 Return receipt service is available for mail sent under the following classification schedules:

Service	Classification schedule
a. Certified mail	*941* [SS–5]
b. COD mail	*944* [SS–6]
c. Insured mail (if insured for more than $50).	*943* [SS–9]
d. Registered mail	*942* [SS–14]
e. Delivery Confirmation	*948*
[e.] *f.* Express Mail	
[f.] *g.* Priority Mail (merchandise only)	
[g.] *h.* Standard Mail (limited to merchandise sent by [Single Piece,] Parcel Post, Bound Printed Matter, Special, and Library Subclasses)	

945.22 Return receipt service is available at the time of mailing or, when purchased in conjunction with certified *mail*, COD, insured *mail* (if for more than $50), registered *mail*, or Express Mail, after mailing.

945.23 Mailers requesting return receipt service at the time of mailing will be provided, as appropriate, the signature of the addressee or addressee's agent, the date delivered, and the address of delivery, if different from the address on the mailpiece.

945.24 Mailers requesting return receipt service after mailing will be provided the date of delivery and the name of the person who signed for the article.

945.25 If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request a duplicate return receipt. No fee is charged for a duplicate return receipt.

945.3 Fees

945.31 The fees for return receipt service are set forth in [Rate] *Fee* Schedule *945* [SS–16.]

946 RESTRICTED DELIVERY

946.1 Definition

946.11 Restricted delivery service is a service that provides a means by which a mailer may direct that delivery will be made only to the addressee or to someone authorized by the addressee to receive such mail.

946.2 Description of Service

946.21 This service is available for mail sent under the following classification schedules:

Service	Classification schedule
a. Certified Mail	*941* [SS–5]
b. COD Mail	*944* [SS–6]
c. Insured Mail (if insured for more than $50).	*943* [SS–9]
d. Registered Mail	*942* [SS–14]

946.22 Restricted delivery is available to the mailer at the time of mailing or after mailing.

946.23 Restricted delivery service is available only to natural persons specified by name.

946.24 A record of delivery will be retained by the Postal Service for a specified period of time.

946.25 Failure to provide restricted delivery service when requested after mailing, due to prior delivery, is not grounds for refund of the fee or communications charges.

946.3 Fees

946.31 The fees for restricted delivery service are set forth in [Rate] *Fee* Schedule *946* [SS–15.]

947 CERTIFICATE OF MAILING

947.1 Definition

947.11 Certificate of mailing service is a service [which] *that* furnishes evidence of mailing.

947.2 Description of Service

947.21 Certificate of mailing service is available to mailers of matter sent under the classification schedule to any class of mail.

947.22 A receipt is not obtained upon delivery of the mail to the addressee. No record of mailing is maintained at the post office.

947.23 Additional copies of certificates of mailing may be obtained by the mailer.

947.3 Other Services

947.31 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Classification schedule
a. Parcel airlift	*951* [SS–13]
b. Special handling	*952* [SS–18]

947.4 Fees

947.41 The fees for certificate of mailing service are set forth in [Rate] *Fee* Schedule *947* [SS–4.]

948 DELIVERY CONFIRMATION

948.1 Definition

948.11 Delivery confirmation service provides confirmation to the mailer that an article was delivered or that a delivery attempt was made.

948.2 Description of Service

948.21 Delivery confirmation service is available for Priority Mail, Parcel Post, Bound Printed Matter, Special Standard Mail, and Library Mail.

948.22 Delivery confirmation service may be requested at the time of mailing only.
948.23 Mail for which delivery confirmation service is requested must meet any preparation requirements established by the Postal Service, and bear a barcode specified by the Postal Service.
948.24 Matter for which delivery confirmation service is requested must be deposited in a manner specified by the Postal Service.
948.3 Fees
948.31 Delivery confirmation service is subject to the fees set forth in Fee Schedule 948.
950 PARCEL HANDLING
951 PARCEL AIRLIFT (PAL)
951.1 Definition
951.11 Parcel airlift service is a service that provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.
951.2 Description of Service
951.21 Parcel airlift service is available for mail sent under the following classification schedule:

Standard Mail

951.3 Physical Limitations
951.31 The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to parcel airlift mail. In no instance may the parcel exceed 30 pounds in weight, or 60 inches in length and girth combined.
951.4 Requirements of the Mailer
951.41 Mail sent under this schedule must be endorsed as [prescribed] *specified* by [regulation] *the Postal Service.*
951.5 Deposit of Mail
951.51 PAL mail must be deposited in a manner specified by the Postal Service
951.6 Forwarding and Return
951.61 PAL mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 2030 of the General Definitions, Terms and Conditions. PAL mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in section 353 as appropriate.
951.7 Other Services
951.71 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Classification schedule
a. Certificate of mailing	*947* [SS–4]
b. Insured mail	*943* S[S–9]
c. Restricted delivery (if insured for more than $50).	*946* [SS–15]
d. Return receipt (if insured for more than $50).	*945* [SS–16]
e. Special handling	*952* [SS–18]

951.8 Fees
951.81 The fees for parcel airlift service are set forth in [Rate] *Fee* Schedule *951* [SS–13.]
952 SPECIAL HANDLING
952.1 Definition
952.11 Special handling service is a service that provides preferential handling to the extent practicable during dispatch and transportation.
952.2 Description of Service
952.21 Special handling service is available for mail sent under the following classification schedules:
a. First-Class Mail
b. [Single Piece,] Parcel Post, Bound Printed Matter, Special, and Library Standard Mail
952.22 Special handling service is mandatory for matter [which] *that* requires special attention in handling, transportation and delivery.
952.3 Requirements of the Mailer
952.31 Mail sent under this schedule must be identified as [prescribed] *specified* by *the Postal Service* [regulation.]
952.4 Deposit of Mail
952.41 Mail sent under this schedule must be deposited in a manner [prescribed] *specified* by the Postal Service.
952.5 Forwarding and Return
952.51 If undeliverable as addressed, special handling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the applicable Standard Mail rate is collected on delivery.
952.6 Other Services
952.61 The following services, *if applicable to the subclass of mail,* may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Classification schedule
a. COD mail	*944* [SS–6]
b. Insured mail	*943* [SS–9]
c. Parcel airlift	*951* [SS–13]
d. Merchandise return (shippers only).	*932* [SS–20]

952.7 Fees
952.71 The fees for special handling service are set forth in [Rate] *Fee* Schedule *952* [SS–18].
960 STAMPED PAPER
961 STAMPED ENVELOPES
961.1 Definition 961.11 Plain stamped envelopes and printed stamped envelopes are envelopes with postage thereon offered for sale by the Postal Service.
961.2 Description of Service
961.21 Stamped envelopes are available for:
a. First-Class Mail within the first rate increment.
b. Standard Mail mailed at a minimum [per piece] *per piece* rate as [prescribed] *specified* by the Postal Service.
961.22 Printed stamped envelopes may be obtained by special request.
961.3 Fees
961.31 The fees for stamped envelopes are set forth in [Rate] *Fee* Schedule *961* [SS–19.]
962 STAMPED CARDS
962.1 Definition
962.11 Stamped Cards. Stamped Cards are cards with postage imprinted or impressed on them and supplied by the Postal Service for the transmission of messages.
962.12 Double Stamped Cards. Double Stamped Cards consist of two attached cards, one of which may be detached by the receiver and returned by mail as a single Stamped Card.
962.2 Description of Service. Stamped Cards are available for First-Class Mail.
962.3 Fees. The fees for Stamped Cards are set forth in [Rate] *Fee* Schedule *962* [SS–19A.]
970 POSTAL MONEY ORDERS
971 DOMESTIC POSTAL MONEY ORDERS
971.1 Definition
971.11 Money order service is a service that provides the customer with an instrument for payment of a specified sum of money.
971.2 Description of Service
971.21 The maximum value for which a domestic postal money order may be purchased is $700. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed [in accordance with] *under* regulations [prescribed] *specified* by *law or* the Postal Service.
971.22 A receipt of purchase is provided at no additional cost.
971.23 The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge if replaced on the date originally issued.
971.24 If a replacement money order is issued after the date of original issue because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.
971.25 Inquiries and/or claims may be filed by the purchaser, payee, or endorsee.
971.3 Fees
971.31 The fees for domestic postal money orders are set forth in [Rate] *Fee* Schedule *971* [SS–8.]

Amend the domestic mail classification schedule as Follows:

General Definitions, Terms and Conditions

1000 GENERAL DEFINITIONS

As used in this Domestic Mail Classification Schedule, the following terms have the meanings set forth below.

1001 Advertising

Advertising includes all material for the publication of which a valuable consideration is paid, accepted, or promised, that calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. If an advertising rate is charged for the publication of reading matter or other material, such material shall be deemed to be advertising. Articles, items, and notices in the form of reading matter inserted in accordance with a custom or understanding that textual matter is to be inserted for the advertiser or his products in the publication in which a display advertisement appears are deemed to be advertising. If a publisher advertises his own services or publications, or any other

business of the publisher, whether in the form of display advertising or editorial or reading matter, this is deemed to be advertising.

1002 Aspect Ratio

Aspect ratio is the ratio of width to length.

1003 Bills and Statements of Account

1003.1 A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.

1003.2 A statement of account is the assertion of the existence of a debt in a definite amount but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.

1003.3 A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount [he] *that* is required to pay [to acquit himself] *for acquittal* of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient information to enable the debtor to determine the exact amount of the claim asserted.

1003.4 A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

1004 Girth

Girth is the measurement around a piece of mail at its thickest part.

1005 Invoice

An invoice is a writing showing the nature, quantity, and cost or price of items shipped or sent to a purchaser or consignor.

1006 Permit Imprints

Permit imprints are printed indicia indicating postage has been paid by the sender under the permit number shown.

1007 Preferred Rates

Preferred rates are the reduced rates established pursuant to 39 U.S.C. 3626.

1008 ZIP Code

The ZIP Code is a numeric code that facilitates the sortation, routing, and delivery of mail.

1009 Nonprofit Organizations and Associations

Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The standard of primary purpose requires that each type of organization or association be both organized and operated for the primary purpose. The following are the types of organizations or associations [which] *that* may qualify as authorized nonprofit organizations or associations.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations that [which] are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or:

(A) To lessen neighborhood tensions;

(B) To eliminate prejudice and discrimination;

(C) To defend human and civil rights secured by law; or

(D) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agriculture pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization [which] that meets all [of] the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

2000 DELIVERY OF MAIL

2010 Delivery Services

The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in [Rate] *Fee* Schedule *921* [SS–10.]

b. Carrier delivery service.

c. General delivery.

d. Post office box service. The fees for post office box service are set forth in [Rate] *Fee* Schedule *922* [SS–10.]

2020 Conditions of Delivery

2021 General. Except as provided in section 2022, mail will be delivered as addressed unless the Postal Service is instructed otherwise by the addressee in writing.

2022 Refusal of Delivery. The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail that does not require a delivery receipt at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service. For mail that requires a delivery receipt, the addressee or his representative may read and copy the name of the sender of registered, insured, certified, COD, return receipt, and Express Mail prior to accepting delivery. Upon signing the delivery receipt the piece may not be returned to the Postal Service without the applicable postage and fees affixed.

2023 Receipt. If a signed receipt is required, mail will be delivered to the addressee (or competent member of his family), to persons who customarily receive his mail or to one authorized in writing to receive the addressee's mail.

2024 Jointly Addressed Mail. Mail addressed to several persons may be delivered to any one of them. When two or more persons make conflicting orders for delivery for the same mail, the mail shall be delivered as determined by the Postal Service.

2025 Commercial Mail Receiving Agents. Mail may be delivered to a commercial mail receiving agency on behalf of another person. In consideration of delivery of mail to the commercial agent, the addressee and the agent are considered to agree that:

a. No [change of address] *change-of-address* order will be filed with the post office when the agency relationship is terminated;

b. When remailed by the commercial agency, the mail is subject to payment of new postage.

2026 Mail Addressed To Organizations. Mail addressed to governmental units, private organizations, corporations, unincorporated firms or partnerships, persons at institutions (including but not limited to hospitals and prisons), or persons in the military is delivered as addressed or to an authorized agent.

2027 Held Mail. Mail will be held for a specified period of time at the office of *delivery* [address] upon request of the addressee, unless the mail:

a. Has contrary retention instructions;

b. Is perishable; or

c. Is registered, COD, insured, return receipt, certified, or Express Mail for which the normal retention period expires before the end of the specified holding period.

2030 Forwarding and Return

2031 Forwarding. Forwarding is the transfer of undeliverable-as-addressed mail to an address other than the one originally placed on the [mail piece]*mailpiece.* All post offices will honor [change of address] *change-of-address* orders for a period of time specified by the Postal Service.

2032 Return. Return is the delivery of undeliverable-as-addressed mail to the sender.

2033 Applicable Provisions. The provisions of sections 150, 250, 350 and 450 apply to forwarding and return.

2034 Forwarding for Postal Service Adjustments. When mail is forwarded due to Postal Service adjustments (such as, but not limited to, the discontinuance of the post office of original address, establishment of rural carrier service, conversion to city delivery service from rural, readjustment of delivery districts, or renumbering of houses and renaming of streets), it is forwarded without charge for a period of time specified by the Postal Service.

3000 POSTAGE AND PREPARATION

3010 Packaging

Mail must be packaged so that:

a. The contents will be protected against deterioration or degradation;

b. The contents will not be likely to damage other mail, Postal Service employees or property, or to become loose in transit;

c. The package surface must be able to retain postage indicia and address markings;

d. It is marked by the mailer with a material [which] *that* is [not] *neither* readily water soluble nor [which can be] easily rubbed off or smeared, and the marking will be sharp and clear.

3020 Envelopes

Paper used in the preparation of envelopes may not be of a brilliant color. Envelopes must be prepared with paper strong enough to withstand normal handling.

3030 Payment of Postage and Fees

Postage must be fully prepaid on all mail at the time of mailing, except as authorized by law or this Schedule. Except as authorized by law or this Schedule, mail deposited without prepayment of sufficient postage shall be delivered to the addressee subject to payment of deficient postage, returned to the sender, or otherwise disposed of as [prescribed] *specified* by the Postal Service. Mail deposited without any postage affixed will be returned to the sender without any attempt at delivery.

3040 Methods for Paying Postage and Fees

Postage for all mail may be prepaid [by] *with* postage meter *indicia,* adhesive stamps, or permit imprint, unless otherwise limited or [prescribed] *specified* by the Postal Service. The following methods of paying postage and fees require prior authorization from the Postal Service:

a. Permit imprint,

b. Postage meter,

c. Precanceled stamps, precanceled envelopes, and mailer's precanceled postmarks.

3050 Authorization Fees

Fees for authorization to use a permit imprint are set forth in [Rate] Schedule 1000. No fee is charged for authorization to use a postage meter. Fees for setting postage meters are set forth in [Rate] *Fee* Schedule 933[SS–12.] No fee is charged for authorization to use precanceled stamps, precanceled envelopes or mailer's precanceled postmark.

3060 Special Service Fees

Fees for special services may be prepaid in any manner appropriate for the class of mail indicated or as otherwise [prescribed] *specified* by the Postal Service.

3070 Marking of Unpaid Mail

Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable First-Class rate of postage.

3080 Refund of Postage

When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made. There shall be no refund for registered, COD, general insurance, and Express Mail Insurance fees when the article is [later] withdrawn by the mailer *after acceptance.* In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

3090 Calculation of Postage

When a rate schedule contains per piece and per pound rates, the postage shall be the sum of the charges produced by those rates. When a rate schedule contains a minimum-[per-piece] *per piece* rate and a pound rate, the postage shall be the greater of the two. When the computation of postage yields a fraction of a cent in the charge, the next higher whole cent must be paid.

4000 POSTAL ZONES

4010 Geographic Units of Area

In the determination of postal zones, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones.

4020 Measurement of Zone Distances

The distance upon which zones are based shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this shall not cause two post offices to be regarded as within the same local zone.

4030 Definition of Zones

4031 Local Zone. The local zone applies to mail mailed at any post office for delivery at that office; at any city letter carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.

4032 First Zone. The first zone includes all territory within the quadrangle of entry in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area. The first zone also applies to mail between two post offices in the same sectional center.

4033 Second Zone. The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

4034 Third Zone. The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

4035 Fourth Zone. The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius approximately 600 miles from the center of a given unit of area.

4036 Fifth Zone. The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

4037 Sixth Zone. The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

4038 Seventh Zone. The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

4039 Eighth Zone. The eighth zone includes all units of area outside the seventh zone.

4040 Zoned Rates

Except as provided in section 4050, rates according to zone apply for zone-rated mail sent between Postal Service facilities including [a]*Armed* [f]*Forces* post offices, wherever located.

4050 APO/FPO Mail

4051 General. Except as provided in section 4052, the rates of postage for zone-rated mail transported between the United States, or the possessions or territories of the United States, on the one hand, and Army, Air Force and Fleet Post Offices on the other, or among the latter, shall be the applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet Post Office concerned.

4052 Transit Mail. The rates of postage for zone-rated mail [which] *that* is mailed at or addressed to an *Armed Forces* [armed forces] post office and [which] is transported directly to or from *Armed Forces* [armed forces] post offices at the expense of the Department of Defense, without transiting any of the 48 contiguous states (including the District of Columbia), shall be the applicable local zone rate; provided, however, that if the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery is greater than the local zone for such mail, postage shall be assessed on the basis of the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery of such mail, as the case may be. The word ''transiting'' does not include enroute transfers at coastal gateway cities which are necessary to transport military mail directly between military post offices.

5000 PRIVACY OF MAIL

5010 First-Class and Express Mail

Matter mailed as First-Class Mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

5020 All Other Mail

Matter not paid at First-Class Mail or Express Mail rates must be wrapped or secured in the manner [prescribed] *specified* by the Postal Service so that the contents may be examined. Mailing of sealed items as other than First-Class Mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

6000 MAILABLE MATTER

6010 General

Mailable matter is any matter which:

a. Is not mailed in contravention of 39 U.S.C. Chapter 30, or of 17 U.S.C. 109;

b. While in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property; and

c. Is not mailed contrary to any special conditions or limitations placed on transportation or movement of certain articles, when imposed under law by the U.S. Department of the Treasury; U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Health and Human Services, U.S. Department of Transportation; and any other Federal department or agency having legal jurisdiction.

6020 Minimum Size Standards

The following minimum size standards apply to all mailable matter:

a. All items must be at least 0.007 inches thick, and

b. all items, other than keys and identification devices, which are 0.25 inch thick or less must be

i. rectangular in shape,

ii. at least 3.5 inches in width, and

iii. at least 5 inches in length.

6030 Maximum Size and Weight Standards

Where applicable, the maximum size and weight standards for each class *or subclass* of mail are set forth in sections 130, 230, *322.16*, 330 and 430. Additional limitations may be applicable to specific subclasses, and rate and discount categories as provided in the eligibility provisions for each subclass or category.

Attached B—Requested Changes in Rates and Fees and Phasing Schedules

In conjunction with the requested changes in the Domestic Mail Classification Schedule (DMCS) set forth in Attachment A, the Postal Service also is requesting that the Commission recommend corresponding changes to the attendant rate and fee schedules.

Rate and fee schedules were last amended in part by the Decision of the Governors on the Further Recommended Decision of the Postal Rate Commission on Classroom Mail, Docket No. MC96–2 (Classroom Decision), as implemented by Resolution 97–9 of the Board of Governors; the Decision of the Governors on the Recommended Decision of the Postal Rate Commission on Special Services Fees and Classifications, Docket No. MC96–3 (Special Services Decision), as implemented by Resolution 97–7 of the Board of Governors; and the Decision of the Governors on the Recommended Decision of the Postal Rate Commission on the Experimental Nonletter-Size Business Reply Mail Categories and Fees, Docket No. MC97–1 (BRM Decision), as implemented by resolution 97–8 of the Board of Governors. The current rate and fee schedules (which are published in part at 39 CFR Part 3001, subpart C, appendix A, and in part as the Attachment to the Classroom Decision 62 (Fed. Reg. 33,142), in part as Attachment B to the Special Services Decision (62 Fed. Reg. 26,099), in part as Attachment B to the BRM Decision (26 Fed. Reg. 25,756), and in part as Attachment B to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Nonprofit Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals, and Within County Periodicals, Docket No. MC96–2(61 Fed. Reg. 42,464)), are incorporated by reference in this Request.

The schedules in this attachment present both proposed and current rates and fees. In general, for existing schedules, proposed additions to text in the schedules or notes are underlined; proposed deletions are in brackets. New or renamed categories within existing schedules are underlined. Rate or fee categories that are either renamed or proposed for elimination are either in brackets or are assigned the acronym ''NA'' in the proposed rate or fee column. Special service schedules are renumbered according to the numbering system presented in Attachment A.

The proposed rate and fee schedules in this attachment contain both the proposed and the current rate levels for the preferred rate categories. The current levels are those approved by the Governors in Docket No. R94–1 for Library Rate, and in Docket No. MC96–2 for all other preferred subclasses. The proposed rates in this attachment are the ''full'' Step 6 rates pursuant 39 U.S.C. § 3626. Section 3626 establishes a six-year phasing period, at the end of which the markups for preferred subclasses will be set at one-half the markups for the corresponding commercial subclasses. The test year in this proceeding is FY 98, during which the markups for preferred subclasses are to be set at 5/12ths the markups for the corresponding commercial subclasses. The phasing schedules provided on pages 67–74 of this attachment show the proposed rates at levels 5 and 6 and are provided for informational purposes only.

The requested changes in the rate and fee schedules are as follows:

EXPRESS MAIL SCHEDULES 121, 122 AND 123

	Proposed rates				Current rates			
Weight not exceeding (pounds)	Schedule 121 same day airport	Schedule 122 customed designed	Schedule 123 post office to post office	Schedule 123 post office to addressee	Schedule 121 same day airport	Schedule 122 customed designed	Schedule 123 post office to post office	Schedule 123 post office to addressee
0.5	$9.25	$9.50	$10.50	$11.25	$9.00	$9.45	$10.25	$10.75
1	10.75	13.50	12.25	14.95	10.50	14.00	12.05	15.00
2	11.25	13.75	12.25	14.95	10.50	14.00	12.05	15.00
3	12.25	15.50	14.00	18.00	11.95	16.15	14.20	17.25
4	13.25	17.35	15.75	20.25	13.05	18.30	16.35	19.40
5	14.25	19.75	17.75	22.00	14.15	20.45	18.50	21.55
6	15.50	22.75	21.00	24.75	15.30	24.30	22.35	25.40
7	16.50	24.25	22.50	27.00	16.40	25.40	23.45	26.45
8	17.75	25.75	23.50	27.75	17.55	26.50	24.55	27.60
9	19.00	27.25	24.50	28.50	18.70	27.60	25.65	28.65
10	20.25	28.75	25.75	30.00	19.75	28.75	26.80	29.80
11	21.50	29.50	26.75	30.75	20.90	29.80	27.85	30.90
12	22.75	30.25	27.75	31.50	22.05	30.95	29.00	32.00
13	24.00	31.00	29.00	32.25	23.15	32.00	30.10	33.10
14	25.25	31.75	31.00	33.50	24.30	33.15	31.20	34.25
15	26.50	32.50	32.00	34.25	25.40	34.25	32.30	35.30
16	27.75	34.00	33.10	35.50	26.50	35.35	33.45	36.45
17	29.00	34.50	34.55	37.00	27.65	36.50	34.55	37.60
18	30.25	36.00	36.00	38.50	28.80	37.60	35.65	38.65
19	31.50	37.50	37.45	40.00	29.90	38.70	36.75	39.80
20	32.75	38.50	38.25	40.75	31.00	39.80	37.85	40.90
21	34.00	40.50	40.00	42.00	32.15	40.95	39.00	42.00
22	35.25	41.00	41.00	43.00	33.25	42.00	40.05	43.10
23	36.50	43.00	42.00	44.25	34.40	43.15	41.20	44.25
24	37.75	44.00	43.00	45.70	35.55	44.25	42.30	45.30
25	39.00	45.00	44.00	47.20	36.60	45.35	43.40	46.45
26	40.25	46.50	45.20	48.65	37.75	46.45	44.50	47.50
27	41.50	47.50	46.65	50.10	38.75	47.55	45.65	48.65
28	42.75	48.50	48.10	51.55	39.70	48.65	46.70	49.75
29	44.00	50.00	49.55	53.00	40.65	49.80	47.85	50.85
30	45.25	50.80	51.00	54.50	41.60	50.90	49.00	52.00
31	46.50	52.25	52.50	55.95	42.50	52.00	50.05	53.10
32	47.60	53.70	53.95	57.40	43.45	53.15	51.20	54.20
33	48.70	55.15	55.40	58.85	44.40	54.20	52.25	55.30
34	49.80	56.65	56.85	60.30	45.30	55.35	53.40	56.45
35	50.90	58.10	58.30	61.75	46.30	56.45	54.50	57.50
36	52.00	59.55	59.80	63.25	47.20	57.55	55.60	58.65
37	53.10	61.00	61.25	64.70	48.10	58.65	56.70	59.70
38	54.20	62.45	62.70	66.15	49.10	59.80	57.85	60.85
39	55.30	63.95	64.15	67.60	50.00	60.85	58.90	61.95
40	56.40	65.40	65.60	67.70	50.90	62.00	60.05	63.05
41	57.50	66.85	66.50	69.15	51.90	63.05	61.15	64.15
42	58.60	68.30	67.20	70.60	52.80	64.20	62.25	65.30
43	59.70	69.75	68.60	72.00	53.75	65.35	63.40	66.40
44	60.80	71.20	70.05	73.45	54.70	66.40	64.50	67.50
45	61.90	72.70	71.45	74.85	55.60	67.55	65.60	68.65
46	63.00	74.15	72.90	76.25	56.55	68.65	66.70	69.70
47	64.10	75.60	73.50	76.55	57.50	69.75	67.80	70.85
48	65.15	77.05	74.60	77.95	58.45	70.85	68.90	71.95
49	66.15	78.50	76.00	79.35	59.35	72.00	70.05	73.05
50	67.15	79.95	77.40	80.75	60.30	73.05	71.10	74.15
51	68.15	80.25	78.80	82.15	61.25	74.20	72.25	75.30
52	69.15	81.70	80.20	83.55	62.15	75.30	73.35	76.35
53	70.15	83.10	81.65	85.00	63.15	76.40	74.45	77.50
54	71.15	84.55	83.05	86.40	64.05	77.55	75.60	78.60
55	72.15	85.95	84.45	87.80	65.00	78.60	76.70	79.70
56	73.15	87.45	85.85	89.20	65.95	79.75	77.80	80.85
57	74.15	88.85	87.25	90.60	66.85	80.85	78.90	81.90
58	75.15	90.30	88.65	92.05	67.80	81.95	80.05	83.05
59	76.15	91.75	90.10	93.45	68.75	83.15	81.20	84.25
60	77.15	93.15	91.50	94.85	69.65	84.45	82.50	85.55
61	78.15	94.60	92.90	96.25	70.65	85.85	83.90	86.95
62	79.15	96.05	94.30	97.65	71.55	87.15	85.20	88.25
63	80.15	97.50	95.70	99.05	72.45	88.45	86.50	89.55
64	81.15	98.90	97.15	100.50	73.45	89.85	87.90	90.95
65	82.15	100.35	98.55	101.90	74.35	91.15	89.20	92.25
66	83.15	101.80	99.95	103.30	75.30	92.55	90.60	93.65
67	84.15	103.20	101.35	104.70	76.25	93.85	91.90	94.95

EXPRESS MAIL SCHEDULES 121, 122 AND 123—Continued

Proposed rates					Current rates			
Weight not exceeding (pounds)	Schedule 121 same day airport	Schedule 122 customed designed	Schedule 123 post office to post office	Schedule 123 post office to addressee	Schedule 121 same day airport	Schedule 122 customed designed	Schedule 123 post office to post office	Schedule 123 post office to addressee
68	85.15	104.70	102.75	106.10	77.15	95.25	93.30	96.35
69	86.15	106.10	104.15	107.50	78.10	96.55	94.60	97.65
70	87.15	107.55	105.60	108.95	79.05	97.85	95.90	98.95

NOTES:
1.The applicable 2-pound rate is charged for matter sent in a ''flat rate'' envelope provided by the Postal Service.
2.Add [$4.95] $8.25 for each pickup stop.
3.Add [$4.95] $8.25 for each Custom Designed delivery stop.
4.Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.

First-Class Mail, Rate Schedule 221 Letters and Sealed Parcels [12]

Letters and Sealed Parcels	Proposed rate (cents)	Current rate (cents)
Regular:		
Single Piece: First Ounce	33.0	32.0
Presort[11]	31.0	29.5
Pre-barcoded Parcels (experimental)[11]	29.0	28.0
Prepaid Reply Mail	30.0	NA
Qualified Business Reply Mail	30.0	NA
Additional Ounce [2]	23.0	23.0
Nonstandard Surcharge		
Single Piece	16.0	11.0
Presort	11.0	5.0
Automation—Presort:[1]		
Letters [3]		
Basic Presort [4]	27.5	26.1
3-Digit Presort [5]	26.5	25.4
5-Digit Presort [6]	24.9	23.8
Carrier Route Presort [7]	24.6	23.0
Flats [8]		
Basic Presort [9]	30.0	29.0
3/5-Digit Presort [10]	28.0	27.0
Additional Ounce [2]	23.0	23.0
Nonstandard Surcharge	11.0	5.0

Schedule 221 Notes:
[1] A mailing fee of [$85.00] *$100.00* must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate. [For presorted mailings weighing more than 2 ounces, subtract 4.6 cents per piece.]
[2] Rate applies through 11 ounces. Heavier pieces are subject to Priority Mail rates.
[3] Rates apply to bulk-entered mailings of at least 500 letter-size pieces, which must be delivery point barcoded and meet other preparation requirements [prescribed] *specified* by the Postal Service.
[4] Rate applies to letter-size Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.
[5] Rate applies to letter-size Automation-Presort category mail presorted to single or multiplethree-digit ZIP Code destinations [as prescribed] specified by the Postal Service.
[6] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations [as prescribed] *specified* by the Postal Service.
[7] Rate applies to letter-size Automation-Presort category mail presorted to carrier routes specified by the Postal Service.
[8] Rates apply to bulk-entered mailings of at least 500 flat-size pieces, each of which must be delivery-point barcoded or bear a ZIP+4 barcode, and must meet other preparation requirements *specified* [prescribed] by the Postal Service.
[9] Rate applies to flat-size Automation-Presort category mail not mailed at the 3/5-Digit rate.
[10] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple three-and five-digit ZIP Code destinations as specified by the Postal Service.
[11] Nonpresorted pre-barcoded parcels must be properly prepared and submitted in mailings of at least 50 pieces. *This experimental discount is in effect until April 28, 1998.*
[12] *Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.*

First-Class Mail, Rate Schedule 222 [Stamped Cards and Post] Cards

Cards	Proposedrate (cents)	Current rate (cents)
Regular:		
Single Piece	21.0	20.0
Presort [1]	19.0	18.0
Prepaid Reply Mail	18.0	NA
Qualified Business Reply Mail	18.0	NA
Automation-Presort:[1 2]		
Basic Presort [3]	17.6	16.6

First-Class Mail, Rate Schedule 222 [Stamped Cards and Post] Cards—Continued

Cards	Proposedrate (cents)	Current rate (cents)
3-Digit Presort [4]	17.0	15.9
5-Digit Presort [5]	15.9	14.3
Carrier Route Presort [6]	15.6	14.0

Schedule 222 Notes:

[1] A mailing fee of [$85.00] *$100.00* must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate.

[2] Rates apply to bulk-entered mailings of at least 500 pieces, which must be barcoded and meet other preparation requirements [prescribed] *specified* by the Postal Service.

[3] Rate applies to Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.

[4] Rate applies to Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

[5] Rate applies to Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.

[6] Rate applies to Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

FIRST-CLASS MAIL, PRIORITY MAIL SUBCLASS, SCHEDULE 223

Priority mail proposed rates							Priority mail current rates						
Weight not exceeding (pounds)	L,1,2&3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Weight not exceeding (pounds)	L,1,2&3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	3.20	3.20	3.20	3.20	3.20	3.20	1	3.00	3.00	3.00	3.00	3.00	3.00
2	3.20	3.20	3.20	3.20	3.20	3.20	2	3.00	3.00	3.00	3.00	3.00	3.00
3	4.40	4.40	4.40	4.40	4.40	4.40	3	4.00	4.00	4.00	4.00	4.00	4.00
4	5.50	5.50	5.50	5.50	5.50	5.50	4	5.00	5.00	5.00	5.00	5.00	5.00
5	6.60	6.60	6.60	6.60	6.60	6.60	5	6.00	6.00	6.00	6.00	6.00	6.00
6	6.75	6.90	7.75	7.80	8.25	8.75	6	6.35	6.90	7.10	7.20	7.80	8.00
7	7.05	7.60	8.60	9.10	9.85	11.15	7	6.65	7.50	8.10	8.40	9.20	9.80
8	7.35	8.30	9.45	10.05	10.85	12.40	8	6.95	8.00	9.00	9.50	10.40	11.60
9	7.65	9.00	10.25	11.00	11.90	13.65	9	7.40	8.60	9.80	10.60	11.30	13.00
10	8.10	9.75	11.10	11.90	12.80	14.85	10	7.80	9.30	10.55	11.40	12.15	14.05
11	8.55	10.45	11.90	12.85	13.85	16.10	11	8.25	9.90	11.35	12.20	13.00	15.10
12	9.00	11.15	12.75	13.80	14.85	17.35	12	8.70	10.55	12.10	13.00	13.90	16.15
13	9.45	11.85	13.60	14.70	15.90	18.60	13	9.10	11.20	12.80	13.80	14.75	17.20
14	9.90	12.60	14.40	15.65	16.90	19.85	14	9.55	11.85	13.60	14.55	15.60	18.25
15	10.35	13.30	15.25	16.60	17.95	21.05	15	10.00	12.45	14.35	15.35	16.50	19.30
16	10.80	14.00	15.50	17.50	18.95	22.30	16	10.40	13.15	15.05	16.15	17.35	20.35
17	11.25	14.75	16.30	18.45	20.00	23.55	17	10.85	13.75	15.80	16.95	18.20	21.40
18	11.70	15.45	17.10	19.40	21.00	24.80	18	11.30	14.35	16.50	17.75	19.05	22.45
19	12.15	16.15	17.90	20.30	22.05	26.05	19	11.70	15.05	17.25	18.55	19.95	23.50
20	12.55	16.85	18.70	21.25	23.05	27.25	20	12.15	15.65	17.95	19.30	20.80	24.55
21	12.95	17.60	18.75	22.20	24.10	28.50	21	12.60	16.35	18.70	20.10	21.65	25.60
22	13.35	18.30	19.50	23.10	25.10	29.75	22	13.00	16.95	19.40	20.90	22.55	26.65
23	13.75	19.00	20.25	24.05	26.15	31.00	23	13.45	17.55	20.15	21.70	23.40	27.70
24	14.15	19.75	21.05	25.00	27.15	32.25	24	13.85	18.25	20.85	22.50	24.25	28.75
25	14.55	20.45	21.80	25.90	28.20	33.45	25	14.30	18.85	21.60	23.25	25.15	29.85
26	14.95	21.15	22.55	26.85	29.20	34.70	26	14.75	19.50	22.30	24.05	26.00	30.90
27	15.35	21.85	23.35	27.80	30.25	35.95	27	15.15	20.15	23.00	24.85	26.85	31.95
28	15.75	22.60	24.10	28.70	31.25	37.20	28	15.60	20.80	23.75	25.65	27.70	33.00
29	16.15	23.30	24.90	29.65	32.30	38.45	29	16.05	21.40	24.45	26.45	28.60	34.05
30	16.40	24.00	25.65	30.60	33.30	39.65	30	16.45	22.10	25.20	27.20	29.45	35.10
31	16.85	24.75	26.40	31.55	34.35	40.90	31	16.90	22.70	25.90	28.00	30.30	36.15
32	17.30	25.45	27.20	32.45	35.35	42.15	32	17.35	23.40	26.65	28.80	31.20	37.20
33	17.75	26.15	27.95	33.40	36.40	43.40	33	17.75	24.00	27.35	29.60	32.05	38.25
34	18.25	26.85	28.70	34.35	37.40	44.65	34	18.20	24.60	28.10	30.40	32.90	39.30
35	18.70	27.60	29.50	35.25	38.40	45.85	35	18.60	25.30	28.80	31.20	33.75	40.35
36	19.15	28.30	30.25	36.20	39.45	47.10	36	19.05	25.90	29.55	31.95	34.65	41.40
37	19.60	29.00	31.05	37.15	40.45	48.35	37	19.50	26.55	30.25	32.75	35.50	42.45
38	20.05	29.75	31.80	38.05	41.50	49.60	38	19.90	27.20	31.00	33.55	36.35	43.50
39	20.55	30.45	32.55	39.00	42.50	50.85	39	20.35	27.80	31.70	34.35	37.25	44.55
40	21.00	31.15	33.35	39.95	43.55	52.10	40	20.80	28.45	32.40	35.15	38.10	45.60
41	21.45	31.85	34.10	40.85	44.55	53.30	41	21.20	29.10	33.15	35.90	38.95	46.65
42	21.90	32.60	34.85	41.80	45.60	54.55	42	21.65	29.75	33.85	36.70	39.85	47.70
43	22.35	33.30	35.65	42.75	46.60	55.80	43	22.10	30.35	34.60	37.50	40.70	48.80
44	22.85	34.00	36.40	43.65	47.65	57.05	44	22.50	31.05	35.30	38.30	41.55	49.85
45	23.30	34.75	37.20	44.60	48.65	58.30	45	22.95	31.65	36.05	39.10	42.40	50.90
46	23.75	35.45	37.95	45.55	49.70	59.50	46	23.35	32.35	36.75	39.85	43.30	51.95
47	24.20	36.15	38.70	46.45	50.70	60.75	47	23.80	32.95	37.50	40.65	44.15	53.00
48	24.65	36.85	39.50	47.40	51.75	62.00	48	24.25	33.55	38.20	41.45	45.00	54.05
49	25.15	37.60	40.25	48.35	52.75	63.25	49	24.65	34.25	38.95	42.25	45.90	55.10
50	25.60	38.30	41.00	49.25	53.80	64.50	50	25.10	34.85	39.65	43.05	46.75	56.15
51	26.05	39.00	41.80	50.20	54.80	65.70	51	25.55	35.50	40.35	43.85	47.60	57.20
52	26.50	39.75	42.55	51.15	55.85	66.95	52	25.95	36.15	41.10	44.60	48.50	58.25
53	26.95	40.45	43.35	52.05	56.85	68.20	53	26.40	36.80	41.80	45.40	49.35	59.30
54	27.45	41.15	44.10	53.00	57.90	69.45	54	26.85	37.40	42.55	46.20	50.20	60.35
55	27.90	41.85	44.85	53.95	58.90	70.70	55	27.25	38.05	43.25	47.00	51.05	61.40
56	28.35	42.60	45.65	54.85	59.95	71.90	56	27.70	38.70	44.00	47.80	51.95	62.45
57	28.80	43.30	46.40	55.80	60.95	73.15	57	28.10	39.35	44.70	48.55	52.80	63.50
58	29.25	44.00	47.15	56.75	62.00	74.40	58	28.55	40.00	45.45	49.35	53.65	64.55
59	29.75	44.75	47.95	57.65	63.00	75.65	59	29.00	40.60	46.15	50.15	54.55	65.60
60	30.20	45.45	48.70	58.60	64.05	76.90	60	29.40	41.30	46.90	50.95	55.40	66.65
61	30.65	46.15	49.50	59.55	65.05	78.10	61	29.85	41.90	47.60	51.75	56.25	67.75
62	31.10	46.85	50.25	60.45	66.10	79.35	62	30.30	42.50	48.35	52.50	57.10	68.80
63	31.55	47.60	51.00	61.40	67.10	80.60	63	30.70	43.20	49.05	53.30	58.00	69.85
64	32.05	48.30	51.80	62.35	68.15	81.85	64	31.15	43.80	49.75	54.10	58.85	70.90
65	32.50	49.00	52.55	63.25	69.15	83.10	65	31.60	44.45	50.50	54.90	59.70	71.95

FIRST-CLASS MAIL, PRIORITY MAIL SUBCLASS, SCHEDULE 223—Continued

Priority mail proposed rates							Priority mail current rates						
Weight not exceeding (pounds)	L,1,2&3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Weight not exceeding (pounds)	L,1,2&3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
66	32.95	49.75	53.30	64.20	70.20	84.30	66	32.00	45.10	51.20	55.70	60.60	73.00
67	33.40	50.45	54.10	65.15	71.20	85.55	67	32.45	45.75	51.95	56.50	61.45	74.05
68	33.85	51.15	54.85	66.05	72.25	86.80	68	32.90	46.35	52.65	57.25	62.30	75.10
69	34.35	51.85	55.65	67.00	73.25	88.05	69	33.30	47.05	53.40	58.05	63.20	76.15
70	34.80	52.60	56.40	67.95	74.30	89.30	70	33.75	47.65	54.10	58.85	64.05	77.20

Notes:
1. The 2-pound rate is charged for matter sent in a ''flat rate'' envelope provided by the Postal Service.
2. Add [$4.95] $8.25 for each pickup stop.
3. [Pieces presented in mailings of at least 300 pieces and meeting applicable Postal Service regulations for presorted priority Mail receive the 11 cents per-piece discount.] *Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.*
4. EXCEPTION: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.
5. Pieces presented in mailings of at least 50 pieces and meeting applicable Postal Service regulations for pre-barcoded Priority Mail parcels receive a discount of 4 cents per piece (experimental). *This experimental discount is in effect until April 28, 1998.*

STANDARD MAIL RATE SCHEDULE 321.1 SINGLE PIECE SUBCLASS

	Rate[1] (cents)
Basic:	
One ounce or less	32
Not more than two ounces	55
Not more than three ounces	78
Not more than four ounces	101
Not more than five ounces	124
Not more than six ounces	147
Not more than seven ounces	170
Not more than eight ounces	193
Not more than nine ounces	216
Not more than ten ounces	239
Not more than eleven ounces	262
Not more than thirteen ounces	290
More than thirteen ounces but less than sixteen ounces	295
Nonstandard Surcharge[2]	11
Keys and Identification Devices:	
First 2 ounces	99
Each additional 2 ounces	55

Schedule 321.1 Notes:
[1] When the postage rate computed at the single piece rate is higher than the rate prescribed in the other Standard Class parcel categories contained in rate schedules 322.1, 322.2, 322.3, or 323.1 for which the piece qualifies, the lower rate applies.
[2] Applies only to pieces weighing one ounce or less.

STANDARD MAIL RATE SCHEDULE 321.2A, REGULAR SUBCLASS PRESORT CATEGORY[1 3]

	Rate (cents)	
	Current	Proposed
Letter size		
Piece Rate		
Basic	25.6	24.7
3/5-Digit	20.9	20.9
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Non-letter size:[4]		
Piece Rate		
Minimum per Piece[2]	30.6	30.0
Basic 3/5 Digit	22.5	24.0
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Pound Rate[2]	67.7	65.0
Plus per Piece Rate		
Basic	16.6	16.6
3/5-Digit	8.5	10.6
Destination Entry Discount per Pound		
BMC	6.4	7.2
SCF	8.5	8.8

Schedule 321.2A notes:
[1] A fee of [$85.00] *$100* must be paid each 12-month period for each bulk mailing permit.
[2] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

[3] *Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.*
[4] *Residual shape surcharge $0.10 per piece.*

STANDARD MAIL RATE SCHEDULE 321.2, B, REGULAR SUBCLASS AUTOMATION CATEGORY [1, 10]

	Rate (cents)	
	Current	Proposed
Letter Size: [3]		
Piece Rate		
Basic Letter [3]	18.3	18.9
3-Digit Letter [4]	17.5	17.8
5-Digit Letter [5]	15.5	16.0
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Flat Size: [6]		
Piece Rate		
Minimum per Piece [7]		
Basic Flat [8]	27.7	24.3
3/5-Digit Flat [9]	18.9	20.7
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Pound Rate [7]	67.7	65.0
Plus per piece Rate		
Basic Flat [8]	13.7	10.9
3/5-Digit Flat [9]	4.9	7.3
Destination Entry Discount per Pound		
BMC	6.4	7.2
SCF	8.5	8.8

Schedule 321.2B notes:
[1] A fee of [$ 85.00] *$100* must be paid once each 12-month period for each bulk mailing permit.
[2] For letter-size automation pieces meeting applicable Postal Service regulations.
[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.
[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.
[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.
[6] For flat-size automation mail meeting applicable Postal Service regulations.
[7] Mailer pays minimum piece rate or pound rate, whichever is higher.
[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.
[9] Rate applies to flat-size automation mail presorted to single or multiple three-and five-digit ZIP Code destinations as specified by the Postal Service.
[10] *Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.*

STANDARD MAIL RATE SCHEDULE 321.3, ENHANCED CARRIER ROUTE SUBCLASS [1, 5]

	Rate (cents)	
	Current	Proposed
Letter Size:		
Piece Rate		
Basic	15.0	16.4
Basic Automated Letter [2]	14.6	15.7
High Density	14.2	14.3
Saturation	13.3	13.4
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
DDU [3]	2.3	2.3
Non-Letter Size [6]		
Piece Rate		
Minimum per Piece [4]		
Basic	15.5	16.4
High Density	14.7	15.3
Saturation	13.7	14.1
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
DDU [3]	2.3	2.3
Pound Rate [4]	66.3	53.0
Plus per Piece Rate		
Basic	1.8	5.5
High Density	1.0	4.4

STANDARD MAIL RATE SCHEDULE 321.3, ENHANCED CARRIER ROUTE SUBCLASS [1, 5]—Continued

	Rate (cents)	
	Current	Proposed
Saturation	0.0	3.2
Destination Entry Discount per Pound		
BMC	6.4	7.2
SCF	8.5	8.8
DDU [3]	11.1	11.0

Schedule 321.3 notes:
[1] A fee of [$85.00] *$100* must be paid each 12-month period for each bulk mailing permit.
[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.
[3] Applies only to enhanced carrier route mail.
[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.
[5] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.
[6] Residual shape surcharge $0.10 per piece.

STANDARD MAIL RATE SCHEDULE 321.4A, NONPROFIT SUBCLASS, PRESORT CATEGORIES [1, 3] (FULL RATES)

	Rate (cents)	
	Current	Proposed
Letter Size:		
Piece Rate		
Basic	13.8	16.5
3/5-Digit	12.0	14.3
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Non-Letter Size: [4]		
Piece Rate		
Minimum per Piece [2]		
Basic	20.1	23.9
3/5-Digit	14.9	17.6
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Pound Rate [2]	48.4	55.0
Plus per Piece Rate		
Basic	10.0	12.6
3/5-Digit	4.8	6.3
Destination Entry Discount per Pound		
BMC	6.2	7.2
SCF	8.8	8.8

Schedule 321.4A Notes
[1] A fee of [$85.00] *$100.00* must be paid once each 12-month period for each bulk mailing permit.
[2] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.
[3] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.
[4] Residual shape surcharge $0.10 per piece.

STANDARD MAIL RATE SCHEDULE 321.4B, NONPROFIT SUBCLASS, AUTOMATION CATEGORIES [1, 10] (Full Rates)

	Rate (cents)	
	current	proposed
Letter Size:		
Piece Rate		
Basic Letter [3]	10.5	12.4
3-Digit Letter [4]	10.1	11.2
5-Digit Letter [5]	8.8	9.5
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Flat Size: [6]		
Piece Rate		
Minimum per Piece [7]		
Basic Flat [8]	17.7	19.0
3/5-Digit [9]	12.5	15.5
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
Pound Rate [7]	48.4	55.0

STANDARD MAIL RATE SCHEDULE 321.4B, NONPROFIT SUBCLASS, AUTOMATION CATEGORIES [1, 10] (Full Rates)—Continued

	Rate (cents)	
	current	proposed
Plus Per Piece Rate		
Basic Flat [8]	7.6	7.7
3/5-Digit Flat [9]	2.4	4.2
Destination Entry Discount per Pound		
BMC	6.2	7.2
SCF	8.8	8.8

Schedule 321.4B notes:
[1] A fee of [$85.00] *$100* must be paid once each 12-month period for each bulk mailing permit.
[2] For letter-size automation pieces meeting applicable Postal Service regulations.
[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.
[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.
[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as [prescribed] *specified* by the Postal Service.
[6] For flat-size automation mail meeting applicable Postal Service regulations.
[7] Mailer pays minimum piece rate or pound rate, whichever is higher.
[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.
[9] Rate applies to flat-size automation mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.
[10] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.

STANDARD MAIL RATE SCHEDULE 321.5, NONPROFIT ENHANCED CARRIER ROUTE SUBCLASS [1, 5] (FULL RATES)

	Rate (cents)	
	Current	Proposed
Letter Size:		
Piece Rate		
Basic	9.9	9.6
Basic Automated Letter [2]	8.5	9.2
High Density	9.3	7.8
Saturation	8.7	7.2
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
DDU [3]	2.4	2.3
Non-Letter Size: [6]		
Piece Rate		
Minimum per Piece [4]		
Basic	10.7	9.6
High Density	10.0	8.6
Saturation	9.4	8.0
Destination Entry Discount per Piece		
BMC	1.3	1.5
SCF	1.8	1.8
DDU [3]	2.4	2.3
Pound Rate [4]	45.1	35.0
Plus per Piece Rate		
Basic	1.3	2.4
High Density	0.6	1.4
Saturation	0.0	0.8
Destination Entry Discount per Pound		
BMC	6.2	7.2
SCF	8.8	8.8
DDU [3]	11.4	11.0

Schedule 321.5 notes:
[1] A fee of [$85.00] *$100* must be paid each 12-month period for each bulk mailing permit.
[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.
[3] Applies only to enhanced carrier route mail.
[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.
[5] Add $0.50 per-piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.
[6] Residual shape surcharge $0.10 per piece.

STANDARD MAIL RATE SCHEDULE 322.1A, PARCEL POST SUBCLASS INTER-BMC RATES (DOLLARS)

Weight (pounds)	Zones 1 & 2		Zone 3		Zone 4		Zone 5		Zone 6		Zone 7		Zone 8	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
2	3.15	2.63	3.15	2.79	3.15	2.87	3.15	2.95	3.15	2.95	3.15	2.95	3.15	2.95

STANDARD MAIL RATE SCHEDULE 322.1A, PARCEL POST SUBCLASS INTER-BMC RATES (DOLLARS)—Continued

Weight (pounds)	Zones 1 & 2		Zone 3		Zone 4		Zone 5		Zone 6		Zone 7		Zone 8	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
3	3.59	2.76	3.85	3.00	4.23	3.34	4.35	3.68	4.35	3.95	4.35	3.95	4.35	3.95
4	3.73	2.87	4.16	3.20	4.80	3.78	5.45	4.68	5.45	4.95	5.45	4.95	5.45	4.95
5	3.86	2.97	4.39	3.38	5.31	4.10	6.22	5.19	6.55	5.56	6.55	5.95	6.55	5.95
6	3.99	3.07	4.62	3.55	5.71	4.39	6.83	5.67	7.75	6.90	8.20	7.75	8.70	7.95
7	4.11	3.16	4.82	3.71	6.07	4.67	7.41	6.11	8.93	7.51	9.80	9.15	11.10	9.75
8	4.24	3.26	5.01	3.85	6.38	4.91	7.94	6.53	9.60	8.08	10.80	9.94	12.35	11.55
9	4.33	3.33	5.19	3.99	6.71	5.16	8.43	6.92	10.25	8.62	11.85	10.65	13.60	12.95
10	4.45	3.42	5.36	4.12	6.99	5.38	8.87	7.29	10.85	9.12	12.75	11.31	14.80	14.00
11	4.54	3.49	5.53	4.25	7.27	5.59	9.30	7.63	11.39	9.59	13.80	11.93	16.05	15.05
12	4.64	3.57	5.68	4.37	7.53	5.79	9.69	7.96	11.91	10.03	14.62	12.52	16.86	16.10
13	4.73	3.64	5.81	4.47	7.77	5.98	10.07	8.26	12.39	10.45	15.25	13.07	17.21	17.15
14	4.82	3.71	5.97	4.59	8.01	6.16	10.42	8.55	12.85	10.84	15.83	13.59	18.27	18.20
15	4.90	3.77	6.10	4.69	8.24	6.34	10.74	8.82	13.26	11.22	16.37	14.08	19.25	19.25
16	4.98	3.83	6.23	4.79	8.45	6.50	11.05	9.09	13.67	11.58	16.88	14.55	20.30	20.30
17	5.07	3.90	6.34	4.88	8.66	6.66	11.35	9.33	14.05	11.92	17.36	15.00	21.35	21.35
18	5.14	3.95	6.46	4.97	8.85	6.81	11.62	9.58	14.40	12.24	17.82	15.42	22.40	22.40
19	5.23	4.02	6.58	5.06	9.04	6.95	11.88	9.80	14.74	12.55	18.26	15.83	23.25	23.25
20	5.29	4.07	6.68	5.14	9.20	7.08	12.13	10.01	15.06	12.84	18.67	16.21	23.84	23.84
21	5.36	4.12	6.80	5.23	9.37	7.21	12.37	10.23	15.36	13.12	19.06	16.59	24.41	24.41
22	5.43	4.18	6.89	5.30	9.54	7.34	12.60	10.43	15.66	13.39	19.43	16.94	24.96	24.96
23	5.50	4.23	7.01	5.39	9.71	7.47	12.82	10.62	15.93	13.66	19.78	17.28	25.47	25.47
24	5.55	4.27	7.10	5.46	9.85	7.58	13.02	10.80	16.21	13.90	20.12	17.60	25.97	25.97
25	5.62	4.32	7.19	5.53	10.01	7.70	13.21	10.98	16.46	14.14	20.43	17.91	26.45	26.45
26	5.68	4.37	7.28	5.60	10.15	7.81	13.40	11.15	16.70	14.37	20.73	18.21	26.91	26.91
27	5.75	4.42	7.37	5.67	10.28	7.91	13.59	11.31	16.93	14.59	21.03	18.50	27.34	27.34
28	5.80	4.46	7.46	5.74	10.43	8.02	13.75	11.47	17.14	14.81	21.32	18.78	27.77	27.77
29	5.86	4.51	7.55	5.81	10.56	8.12	13.92	11.63	17.35	15.01	21.58	19.05	28.17	28.17
30	5.92	4.55	7.63	5.87	10.67	8.21	14.08	11.78	17.55	15.20	21.84	19.30	28.57	28.57
31	5.98	4.60	7.70	5.92	10.80	8.31	14.23	11.92	17.75	15.39	22.08	19.55	28.94	28.94
32	6.03	4.64	7.79	5.99	10.92	8.40	14.38	12.06	17.94	15.58	22.31	19.79	29.30	29.30
33	6.08	4.68	7.87	6.05	11.04	8.49	14.52	12.20	18.11	15.76	22.54	20.02	29.66	29.66
34	6.14	4.72	7.93	6.10	11.14	8.57	14.65	12.32	18.29	15.94	22.75	20.24	30.00	30.00
35	6.19	4.76	8.01	6.16	11.26	8.66	14.79	12.45	18.46	16.11	22.96	20.46	30.33	30.33
36	6.24	4.80	8.07	6.21	11.38	8.75	14.91	12.58	18.61	16.27	23.16	20.66	30.64	30.64
37	6.29	4.84	8.14	6.26	11.47	8.82	15.04	12.70	18.77	16.43	23.35	20.87	30.94	30.94
38	6.34	4.88	8.22	6.32	11.58	8.91	15.15	12.81	18.92	16.57	23.54	21.07	31.24	31.24
39	6.40	4.92	8.28	6.37	11.67	8.98	15.27	12.92	19.06	16.72	23.71	21.26	31.53	31.53
40	6.44	4.95	8.35	6.42	11.77	9.05	15.37	13.04	19.20	16.86	23.89	21.44	31.81	31.81
41	6.50	5.00	8.42	6.48	11.86	9.12	15.50	13.14	19.33	17.00	24.06	21.62	32.07	32.07
42	6.54	5.03	8.48	6.52	11.95	9.19	15.60	13.24	19.46	17.14	24.21	21.79	32.33	32.33
43	6.58	5.06	8.54	6.57	12.05	9.27	15.69	13.35	19.58	17.28	24.37	21.96	32.58	32.58
44	6.63	5.10	8.59	6.61	12.13	9.33	15.79	13.44	19.70	17.41	24.52	22.12	32.83	32.83
45	6.67	5.13	8.66	6.66	12.22	9.40	15.88	13.54	19.81	17.52	24.66	22.28	33.06	33.06
46	6.72	5.17	8.72	6.71	12.30	9.46	15.98	13.63	19.93	17.65	24.80	22.44	33.30	33.30
47	6.77	5.21	8.78	6.75	12.38	9.52	16.06	13.72	20.03	17.77	24.93	22.59	33.52	33.52
48	6.81	5.24	8.84	6.80	12.47	9.59	16.15	13.82	20.14	17.88	25.06	22.74	33.73	33.73
49	6.85	5.27	8.89	6.84	12.55	9.65	16.24	13.90	20.24	17.99	25.18	22.88	33.95	33.95
50	6.89	5.30	8.94	6.88	12.61	9.70	16.31	13.99	20.35	18.10	25.31	23.02	34.15	34.15
51	6.94	5.34	9.00	6.92	12.70	9.77	16.39	14.07	20.44	18.20	25.42	23.16	34.35	34.35
52	6.98	5.37	9.06	6.97	12.77	9.82	16.47	14.15	20.53	18.31	25.54	23.29	34.54	34.54
53	7.02	5.40	9.11	7.01	12.83	9.87	16.54	14.23	20.62	18.42	25.64	23.41	34.74	34.74
54	7.06	5.43	9.17	7.05	12.91	9.93	16.61	14.31	20.71	18.51	25.76	23.54	34.92	34.92
55	7.10	5.46	9.20	7.08	12.99	9.99	16.69	14.38	20.79	18.61	25.85	23.66	35.10	35.10
56	7.15	5.50	9.27	7.13	13.05	10.04	16.75	14.45	20.88	18.70	25.96	23.79	35.27	35.27
57	7.19	5.53	9.32	7.17	13.12	10.09	16.82	14.53	20.95	18.80	26.05	23.89	35.44	35.44
58	7.23	5.56	9.36	7.20	13.18	10.14	16.88	14.60	21.04	18.89	26.14	24.01	35.60	35.60
59	7.27	5.59	9.41	7.24	13.25	10.19	16.95	14.67	21.12	18.97	26.24	24.12	35.76	35.76
60	7.31	5.62	9.46	7.28	13.33	10.25	17.01	14.74	21.19	19.07	26.32	24.22	35.92	35.92
61	7.36	5.66	9.52	7.32	13.38	10.29	17.07	14.81	21.26	19.14	26.40	24.33	36.07	36.07
62	7.40	5.69	9.56	7.35	13.44	10.34	17.12	14.87	21.34	19.23	26.49	24.44	36.22	36.22
63	7.42	5.71	9.61	7.39	13.51	10.39	17.19	14.93	21.40	19.31	26.58	24.53	36.37	36.37
64	7.46	5.74	9.65	7.42	13.57	10.44	17.24	15.00	21.46	19.39	26.66	24.64	36.50	36.50
65	7.50	5.77	9.70	7.46	13.62	10.48	17.29	15.06	21.52	19.46	26.74	24.73	36.64	36.64
66	7.55	5.81	9.75	7.50	13.68	10.52	17.34	15.13	21.59	19.55	26.81	24.82	36.77	36.77
67	7.59	5.84	9.79	7.53	13.74	10.57	17.39	15.18	21.65	19.62	26.88	24.92	36.91	36.91
68	7.62	5.86	9.83	7.56	13.81	10.62	17.45	15.24	21.71	19.68	26.96	25.00	37.04	37.04
69	7.66	5.89	9.87	7.59	13.86	10.66	17.50	15.30	21.76	19.76	27.02	25.10	37.15	37.15
70	7.70	5.92	9.93	7.64	13.92	10.71	17.55	15.35	21.83	19.83	27.08	25.18	37.28	37.28

Schedule 322.1A notes:
[1] For nonmachinable Inter-BMC parcels, add: $1.35 per piece.
[2] For each pickup stop, add: $8.25.
[3] For Origin Bulk Mail Center Discount, deduct $0.57 per piece.
[4] For BMC Presort, deduct $0.12 per piece.
[5] For Barcoded Discount, deduct $0.04 per piece.
[6] See DMCS section 322.16 for oversize Parcel Post.
[7] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.

RATE SCHEDULE 322.1B PARCEL POST SUBCLASS, INTRA-BMC RATES (DOLLARS)

Weight (pounds)	Local		Zones 1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
2	2.48	2.24	2.70	2.31	2.70	2.47	2.70	2.55	2.70	2.63
3	2.65	2.31	2.98	2.44	2.98	2.68	3.02	3.02	3.36	3.36
4	2.79	2.39	3.25	2.55	3.25	2.88	3.46	3.46	4.36	4.36
5	2.94	2.45	3.45	2.65	3.50	3.06	3.78	3.78	4.87	4.87

RATE SCHEDULE 322.1B PARCEL POST SUBCLASS, INTRA-BMC RATES (DOLLARS)—Continued

Weight (pounds)	Local		Zones 1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
6	3.08	2.52	3.58	2.75	3.73	3.23	4.07	4.07	5.35	5.35
7	3.20	2.58	3.69	2.84	3.95	3.39	4.35	4.35	5.79	5.79
8	3.33	2.64	3.82	2.94	4.15	3.53	4.59	4.59	6.21	6.21
9	3.44	2.69	3.91	3.01	4.36	3.67	4.84	4.84	6.60	6.60
10	3.55	2.75	4.03	3.10	4.54	3.80	5.06	5.06	6.97	6.97
11	3.64	2.80	4.12	3.17	4.71	3.93	5.27	5.27	7.31	7.31
12	3.71	2.85	4.23	3.25	4.88	4.05	5.47	5.47	7.64	7.64
13	3.78	2.91	4.32	3.32	5.04	4.15	5.66	5.66	7.94	7.94
14	3.84	2.95	4.41	3.39	5.18	4.27	5.84	5.84	8.23	8.23
15	3.90	3.00	4.49	3.45	5.33	4.37	6.02	6.02	8.50	8.50
16	3.97	3.05	4.56	3.51	5.47	4.47	6.18	6.18	8.77	8.77
17	4.02	3.09	4.65	3.58	5.61	4.56	6.34	6.34	9.01	9.01
18	4.07	3.13	4.72	3.63	5.74	4.65	6.49	6.49	9.26	9.26
19	4.12	3.17	4.81	3.70	5.86	4.74	6.63	6.63	9.48	9.48
20	4.19	3.22	4.88	3.75	5.98	4.82	6.76	6.76	9.69	9.69
21	4.23	3.25	4.94	3.80	6.10	4.91	6.89	6.89	9.91	9.91
22	4.28	3.29	5.02	3.86	6.20	4.98	7.02	7.02	10.11	10.11
23	4.33	3.33	5.08	3.91	6.32	5.07	7.15	7.15	10.30	10.30
24	4.38	3.37	5.14	3.95	6.42	5.14	7.26	7.26	10.48	10.48
25	4.43	3.41	5.20	4.00	6.53	5.21	7.38	7.38	10.66	10.66
26	4.47	3.44	5.27	4.05	6.62	5.28	7.49	7.49	10.83	10.83
27	4.52	3.48	5.33	4.10	6.73	5.35	7.59	7.59	10.99	10.99
28	4.56	3.51	5.38	4.14	6.82	5.42	7.70	7.70	11.15	11.15
29	4.62	3.55	5.45	4.19	6.91	5.49	7.80	7.80	11.31	11.31
30	4.67	3.59	5.50	4.23	7.01	5.55	7.89	7.89	11.46	11.46
31	4.71	3.62	5.56	4.28	7.10	5.60	7.99	7.99	11.60	11.60
32	4.75	3.65	5.62	4.32	7.18	5.67	8.08	8.08	11.74	11.74
33	4.80	3.69	5.67	4.36	7.27	5.73	8.17	8.17	11.88	11.88
34	4.84	3.72	5.72	4.40	7.35	5.78	8.25	8.25	12.00	12.00
35	4.88	3.75	5.77	4.44	7.42	5.84	8.34	8.34	12.13	12.13
36	4.91	3.78	5.82	4.48	7.51	5.89	8.43	8.43	12.26	12.26
37	4.95	3.81	5.88	4.52	7.58	5.94	8.50	8.50	12.38	12.38
38	4.99	3.84	5.93	4.56	7.65	6.00	8.59	8.59	12.49	12.49
39	5.04	3.88	5.98	4.60	7.73	6.05	8.66	8.66	12.60	12.60
40	5.08	3.91	6.02	4.63	7.80	6.10	8.73	8.73	12.72	12.72
41	5.12	3.94	6.08	4.68	7.87	6.16	8.80	8.80	12.82	12.82
42	5.16	3.97	6.12	4.71	7.95	6.20	8.87	8.87	12.92	12.92
43	5.20	4.00	6.16	4.74	8.01	6.25	8.95	8.95	13.03	13.03
44	5.25	4.04	6.21	4.78	8.08	6.29	9.01	9.01	13.12	13.12
45	5.28	4.06	6.25	4.81	8.14	6.34	9.08	9.08	13.22	13.22
46	5.32	4.09	6.31	4.85	8.21	6.39	9.14	9.14	13.31	13.31
47	5.36	4.12	6.36	4.89	8.27	6.43	9.20	9.20	13.40	13.40
48	5.40	4.15	6.40	4.92	8.33	6.48	9.27	9.27	13.50	13.50
49	5.43	4.18	6.44	4.95	8.39	6.52	9.33	9.33	13.58	13.58
50	5.47	4.21	6.47	4.98	8.46	6.56	9.38	9.38	13.67	13.67
51	5.51	4.24	6.53	5.02	8.52	6.60	9.45	9.45	13.75	13.75
52	5.54	4.26	6.57	5.05	8.57	6.65	9.50	9.50	13.83	13.83
53	5.58	4.29	6.60	5.08	8.63	6.69	9.55	9.55	13.91	13.91
54	5.62	4.32	6.64	5.11	8.69	6.73	9.61	9.61	13.99	13.99
55	5.66	4.35	6.68	5.14	8.75	6.76	9.67	9.67	14.06	14.06
56	5.69	4.38	6.73	5.18	8.80	6.81	9.72	9.72	14.13	14.13
57	5.72	4.40	6.77	5.21	8.85	6.85	9.77	9.77	14.21	14.21
58	5.76	4.43	6.81	5.24	8.91	6.88	9.82	9.82	14.28	14.28
59	5.80	4.46	6.85	5.27	8.96	6.92	9.87	9.87	14.35	14.35
60	5.82	4.48	6.89	5.30	9.01	6.96	9.93	9.93	14.42	14.42
61	5.88	4.52	6.94	5.34	9.06	7.00	9.97	9.97	14.49	14.49
62	5.90	4.54	6.98	5.37	9.11	7.03	10.02	10.02	14.55	14.55
63	5.94	4.57	7.01	5.39	9.17	7.07	10.07	10.07	14.61	14.61
64	5.97	4.59	7.05	5.42	9.22	7.10	10.12	10.12	14.68	14.68
65	6.01	4.62	7.09	5.45	9.27	7.14	10.16	10.16	14.74	14.74
66	6.03	4.64	7.14	5.49	9.31	7.18	10.20	10.20	14.81	14.81
67	6.08	4.68	7.18	5.52	9.36	7.21	10.25	10.25	14.86	14.86
68	6.11	4.70	7.20	5.54	9.41	7.24	10.30	10.30	14.92	14.92
69	6.15	4.73	7.24	5.57	9.46	7.27	10.34	10.34	14.98	14.98
70	6.18	4.75	7.28	5.60	9.50	7.32	10.39	10.39	15.03	15.03

Schedule 322.1B notes:
[1] For Barcoded Discount, deduct $0.04 per piece.
[2] See DMCS section 322.16 for oversize Parcel Post.
[3] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.

[4] For each pickup stop, add $8.25.

STANDARD MAIL RATE SCHEDULE 322.1C PARCEL POST SUBCLASS DESTINATION BMC RATES (DOLLARS)

Weight (Pounds)	Zones1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
2	2.01	2.10	2.26	2.25	2.70	2.30	2.70	2.33
3	2.18	2.22	2.67	2.44	3.02	2.74	3.36	3.00
4	2.34	2.33	2.99	2.62	3.46	3.15	4.36	3.94
5	2.49	2.42	3.28	2.79	3.78	3.45	4.87	4.40
6	2.63	2.51	3.56	2.95	4.07	3.71	5.35	4.83
7	2.75	2.60	3.82	3.09	4.35	3.97	5.79	5.22
8	2.88	2.69	4.06	3.22	4.59	4.19	6.21	5.60
9	3.00	2.76	4.30	3.35	4.84	4.42	6.60	5.95
10	3.11	2.84	4.52	3.47	5.06	4.62	6.97	6.29
11	3.21	2.91	4.67	3.59	5.27	4.82	7.31	6.59
12	3.32	2.98	4.81	3.70	5.47	5.00	7.64	6.89
13	3.41	3.05	4.93	3.79	5.66	5.17	7.94	7.16
14	3.50	3.11	5.08	3.91	5.84	5.34	8.23	7.42
15	3.60	3.17	5.20	4.00	6.02	5.51	8.50	7.67
16	3.68	3.23	5.32	4.09	6.18	5.65	8.77	7.91
17	3.76	3.29	5.43	4.18	6.34	5.80	9.01	8.13
18	3.85	3.34	5.54	4.26	6.49	5.94	9.26	8.35
19	3.92	3.41	5.64	4.34	6.63	6.07	9.48	8.55
20	4.00	3.45	5.75	4.42	6.76	6.19	9.69	8.74
21	4.08	3.50	5.85	4.50	6.89	6.31	9.91	8.94
22	4.15	3.56	5.94	4.57	7.02	6.43	10.11	9.12
23	4.22	3.61	6.05	4.65	7.15	6.55	10.30	9.30
24	4.30	3.64	6.14	4.72	7.26	6.65	10.48	9.46
25	4.36	3.69	6.21	4.78	7.38	6.77	10.66	9.62
26	4.42	3.74	6.31	4.85	7.49	6.87	10.83	9.78
27	4.48	3.79	6.38	4.91	7.59	6.96	10.99	9.92
28	4.55	3.83	6.47	4.98	7.70	7.06	11.15	10.07
29	4.61	3.87	6.57	5.05	7.80	7.16	11.31	10.21
30	4.66	3.91	6.63	5.10	7.89	7.24	11.46	10.35
31	4.72	3.96	6.70	5.15	7.99	7.33	11.60	10.48
32	4.78	4.00	6.79	5.22	8.08	7.42	11.74	10.61
33	4.84	4.04	6.85	5.27	8.17	7.50	11.88	10.73
34	4.89	4.08	6.92	5.32	8.25	7.58	12.00	10.84
35	4.94	4.11	6.99	5.38	8.34	7.66	12.13	10.96
36	5.00	4.15	7.05	5.42	8.43	7.75	12.26	11.08
37	5.05	4.19	7.11	5.47	8.50	7.81	12.38	11.19
38	5.10	4.23	7.19	5.53	8.59	7.90	12.49	11.29
39	5.14	4.27	7.24	5.57	8.66	7.96	12.60	11.39
40	5.19	4.30	7.31	5.62	8.73	8.03	12.72	11.50
41	5.25	4.35	7.38	5.68	8.80	8.09	12.82	11.59
42	5.29	4.38	7.44	5.72	8.87	8.16	12.92	11.68
43	5.34	4.40	7.49	5.76	8.95	8.23	13.03	11.79
44	5.38	4.44	7.54	5.80	9.01	8.29	13.12	11.87
45	5.42	4.47	7.61	5.85	9.08	8.36	13.22	11.96
46	5.47	4.51	7.67	5.90	9.14	8.41	13.31	12.04
47	5.52	4.55	7.72	5.94	9.20	8.47	13.40	12.13
48	5.56	4.58	7.77	5.98	9.27	8.53	13.50	12.22
49	5.60	4.61	7.83	6.02	9.33	8.59	13.58	12.29
50	5.64	4.64	7.88	6.06	9.38	8.64	13.67	12.38
51	5.68	4.68	7.93	6.10	9.45	8.70	13.75	12.45
52	5.73	4.71	8.00	6.15	9.50	8.75	13.83	12.52
53	5.77	4.73	8.05	6.19	9.55	8.80	13.91	12.60
54	5.81	4.76	8.09	6.22	9.61	8.86	13.99	12.67
55	5.85	4.79	8.13	6.25	9.67	8.91	14.06	12.74
56	5.89	4.83	8.19	6.30	9.72	8.96	14.13	12.80
57	5.93	4.86	8.24	6.34	9.77	9.01	14.21	12.88
58	5.97	4.89	8.28	6.37	9.82	9.06	14.28	12.94
59	6.01	4.92	8.33	6.41	9.87	9.10	14.35	13.01
60	6.05	4.95	8.39	6.45	9.93	9.16	14.42	13.07
61	6.08	4.99	8.42	6.48	9.97	9.20	14.49	13.14
62	6.12	5.02	8.46	6.51	10.02	9.25	14.55	13.19
63	6.15	5.04	8.52	6.55	10.07	9.29	14.61	13.25
64	6.19	5.07	8.55	6.58	10.12	9.34	14.68	13.31
65	6.23	5.10	8.61	6.62	10.16	9.38	14.74	13.37
66	6.27	5.14	8.66	6.66	10.20	9.42	14.81	13.43
67	6.30	5.17	8.70	6.69	10.25	9.47	14.86	13.48
68	6.34	5.19	8.74	6.72	10.30	9.51	14.92	13.54
69	6.37	5.21	8.76	6.74	10.34	9.55	14.98	13.59

STANDARD MAIL RATE SCHEDULE 322.1C PARCEL POST SUBCLASS DESTINATION BMC RATES (DOLLARS)—Continued

Weight (Pounds)	Zones1 & 2		Zone 3		Zone 4		Zone 5	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
70	6.41	5.24	8.83	6.79	10.39	9.60	15.03	13.64

Schedule 322.1C notes:
[1] For Barcoded Discount, deduct $0.04 per piece
[2] See DMCS section 322.16 for oversize Parcel Post.
[3] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.
[4] A fee of $100 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.1D, PARCEL POST SUBCLASS, DESTINATION SCF RATES (DOLLARS)

Weight (pounds)	DSCF
	Proposed
2	1.60
3	1.72
4	1.84
5	1.94
6	2.04
7	2.12
8	2.22
9	2.31
10	2.38
11	2.46
12	2.54
13	2.60
14	2.67
15	2.74
16	2.80
17	2.86
18	2.93
19	2.98
20	3.04
21	3.11
22	3.16
23	3.21
24	3.28
25	3.32
26	3.37
27	3.42
28	3.47
29	3.52
30	3.56
31	3.61
32	3.66
33	3.70
34	3.74
35	3.78
36	3.83
37	3.87
38	3.91
39	3.95
40	3.99
41	4.04
42	4.07
43	4.11
44	4.14
45	4.18
46	4.22
47	4.26
48	4.30
49	4.33
50	4.36
51	4.40
52	4.44
53	4.47
54	4.51
55	4.54
56	4.58

STANDARD MAIL RATE SCHEDULE 322.1D, PARCEL POST SUBCLASS, DESTINATION SCF RATES (DOLLARS)—Continued

Weight (pounds)	DSCF
	Proposed
57	4.61
58	4.65
59	4.68
60	4.72
61	4.74
62	4.78
63	4.80
64	4.84
65	4.87
66	4.91
67	4.94
68	4.97
69	5.00
70	5.03

Schedule 322.1D notes:
[1] See DMCS section 322.16 for oversize Parcel Post.
[2] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.
[3] A fee of $100.00 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.1E, PARCEL POST SUBCLASS DESTINATION DELIVERY UNIT RATES (DOLLARS)

Weight (pounds)	DDU
	Proposed
2	1.37
3	1.44
4	1.48
5	1.54
6	1.59
7	1.63
8	1.69
9	1.73
10	1.77
11	1.80
12	1.81
13	1.83
14	1.83
15	1.84
16	1.87
17	1.87
18	1.88
19	1.89
20	1.92
21	1.92
22	1.93

STANDARD MAIL RATE SCHEDULE 322.1E, PARCEL POST SUBCLASS DESTINATION DELIVERY UNIT RATES (DOLLARS)—Continued

Weight (pounds)	DDU
	Proposed
23	1.95
24	1.96
25	1.98
26	1.99
27	2.01
28	2.02
29	2.05
30	2.08
31	2.09
32	2.11
33	2.13
34	2.15
35	2.16
36	2.17
37	2.19
38	2.21
39	2.24
40	2.26
41	2.28
42	2.30
43	2.32
44	2.36
45	2.37
46	2.39
47	2.42
48	2.44
49	2.46
50	2.48
51	2.51
52	2.52
53	2.55
54	2.58
55	2.60
56	2.62
57	2.64
58	2.67
59	2.69
60	2.70
61	2.75
62	2.76
63	2.79
64	2.81
65	2.84
66	2.85
67	2.89
68	2.91
69	2.94
70	2.96

Schedule 322.1E Notes:
[1] See DMCS section 322.16 for oversize Parcel Post.
[2] Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.

[3] A fee of $100.00 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.3A BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES * (DOLLARS)

Weight not exceeding (pounds)	Zones															
	Local		1&2		3		4		5		6		7		8	
	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current
1.5	$1.15	$1.20	$1.73	$1.65	$1.85	$1.75	$2.05	$1.91	$2.35	$2.15	$2.67	$2.40	$3.06	$2.71	$3.38	$2.97
2	1.17	1.22	1.77	1.68	1.90	1.79	2.12	1.96	2.46	2.23	2.82	2.51	3.24	2.85	3.61	3.14
2.5	1.19	1.25	1.85	1.73	2.00	1.86	2.27	2.07	2.67	2.39	3.10	2.73	3.61	3.14	4.05	3.49
3	1.21	1.28	1.92	1.79	2.10	1.94	2.41	2.18	2.89	2.56	3.39	2.95	3.98	3.43	4.49	3.83
3.5	1.23	1.31	2.00	1.84	2.21	2.01	2.56	2.29	3.10	2.72	3.67	3.17	4.35	3.71	4.93	4.18
4	1.26	1.34	2.07	1.90	2.31	2.09	2.70	2.40	3.32	2.89	3.96	3.39	4.72	4.00	5.38	4.52
4.5	1.28	1.37	2.15	1.95	2.41	2.16	2.85	2.51	3.53	3.05	4.24	3.61	5.09	4.29	5.82	4.87
5	1.30	1.40	2.23	2.00	2.51	2.24	3.00	2.62	3.74	3.21	4.53	3.83	5.46	4.58	6.26	5.22
6	1.33	1.43	2.30	2.06	2.61	2.31	3.14	2.73	3.96	3.38	4.81	4.05	5.83	4.87	6.71	5.56
7	1.35	1.46	2.38	2.11	2.72	2.39	3.29	2.84	4.17	3.54	5.10	4.27	6.20	5.15	7.15	5.91
8	1.37	1.49	2.45	2.17	2.82	2.46	3.43	2.95	4.39	3.71	5.38	4.49	6.57	5.44	7.59	6.25
9	1.40	1.53	2.53	2.22	2.92	2.54	3.58	3.06	4.60	3.87	5.67	4.71	6.94	5.73	8.04	6.60
10	1.28	1.37	2.15	1.95	2.41	2.16	2.85	2.51	3.53	3.05	4.24	3.61	5.09	4.29	5.82	4.87
11	1.30	N.A.	2.23	N.A.	2.51	N.A.	3.00	N.A.	3.74	N.A.	4.53	N.A.	5.46	N.A.	6.26	N.A.
12	1.33	N.A.	2.30	N.A.	2.61	N.A.	3.14	N.A.	3.96	N.A.	4.81	N.A.	5.83	N.A.	6.71	N.A.
13	1.35	N.A.	2.38	N.A.	2.72	N.A.	3.29	N.A.	4.17	N.A.	5.10	N.A.	6.20	N.A.	7.15	N.A.
14	1.37	N.A.	2.45	N.A.	2.82	N.A.	3.43	N.A.	4.39	N.A.	5.38	N.A.	6.57	N.A.	7.59	N.A.
15	1.40	N.A.	2.53	N.A.	2.92	N.A.	3.58	N.A.	4.60	N.A.	5.67	N.A.	6.94	N.A.	8.04	N.A.
Per piece rate	1.05	1.06	1.39	1.41	1.39	1.41	1.39	1.41	1.39	1.41	1.39	1.41	1.39	1.41	1.39	1.41
Per pound rate	0.023	0.031	0.076	0.054	0.102	0.075	0.146	0.110	0.214	0.164	0.285	0.220	0.370	0.288	0.443	0.346

Schedule 322.3A notes:
* *1.* Includes both catalogs and similar bound printed matter.
2. For barcoded discount, deduct $0.04 per piece.

STANDARD MAIL RATE SCHEDULE 322.3B BOUND PRINTED MATTER SUBCLASS BULK AND CARRIER ROUTE PRESORT RATES[1] (DOLLARS)

Zone	Per-piece [3]		Carrier route [2]		Per-pound	
	Proposed	Current	Proposed	Current	Proposed	Current
Local	0.523	0.530	0.456	0.467	0.012	0.023
1 and 2	0.697	0.700	0.630	0.637	0.061	0.043
3	0.697	0.700	0.630	0.637	0.087	0.063
4	0.697	0.700	0.630	0.637	0.131	0.099
5	0.697	0.700	0.630	0.637	0.198	0.152
6	0.697	0.700	0.630	0.637	0.269	0.209
7	0.697	0.700	0.630	0.637	0.355	0.277
8	0.697	0.700	0.630	0.637	0.428	0.335

Schedule 322.3B notes:
[1] Includes both catalogs and similar bound printed matter.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as [prescribed] *specified* by the Postal Service.
[3] For Barcoded Discount, deduct $0.04 per-piece.

STANDARD MAIL RATE SCHEDULES 323.1 & 323.2 SPECIAL AND LIBRARY RATE SUBCLASSES

Schedule 323.1: Special	Proposed rates (cents)	Current rates (cents)
First Pound Not presorted [4]	124	124
LEVEL A Presort (5-digits) [1 2]	90	70
LEVEL B Presort (BMC) [1 3 4]	112	104
Each additional pound through 7 pounds	51	50
Each additional pound over 7 pounds	21	31
Schedule 323.2: Library	Proposed full rates (cents)	Current full rates (cents)
First Pound	144	112
Each additional pound through 7 pounds	52	42
Each additional pound over 7 pounds	25	22

Schedule 323.1 notes:
[1] A fee of [$85.00] *$100.00* must be paid once each 12-month period for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.
[4] *For Barcoded Discount, deduct $0.04 per-piece.*
Schedule 323.2 notes:
1 Add $0.50 per piece for hazardous medical materials and $1.00 per piece for other mailable hazardous materials.
2 For Barcoded Discount, deduct $0.04 per-piece.

PERIODICALS RATE SCHEDULE 421 REGULAR SUBCLASS [1, 2]

	Postage rate unit	Current rate [3] (cents)	Proposed rate (cents)
Per Pound:			
Nonadvertising Portion	Pound	16.1	17.4
Advertising Portion:.			
Delivery Office [4]	Pound	16.9	15.8
SCF [5]	Pound	19.0	18.0
1&2	Pound	21.4	20.3
3	Pound	22.4	21.6
4	Pound	25.1	25.1
5	Pound	29.2	30.5
6	Pound	33.6	36.1
7	Pound	38.8	41.6
8	Pound	43.2	47.4
Science of Agriculture:.			
Delivery Office	Pound	12.7	11.9
SCF	Pound	14.3	13.5
Zones 1&2	Pound	16.1	15.2
Per Piece: Less Non Advertising Factor [6]		5.7	5.9
Required Preparation [7]	Piece	24.0	26.3
Presorted to 3-digit city/5-digit	Piece	20.2	N.A.
Presorted to 3-digit	Piece	N.A.	21.7
Presorted to 5-digit	Piece	N.A.	21.4
Presorted to Carrier Route	Piece	11.9	12.8
Discounts:			
Prepared to Delivery Office [4]	Piece	2.1	2.3
Prepared to SCF [5]	Piece	1.1	1.2
High Density [8]	Piece	0.8	1.2
Saturation [9]	Piece	2.4	2.6
Automation Discounts for Automation Compatible Mail [10]			
From Required:			
Pre-barcoded letter size	Piece	4.6	8.1
Pre-barcoded flats	Piece	3.1	4.2
From 3/5 Digit:			
Pre-barcoded 3-digit letter size	Piece	2.9	N.A.
Pre-barcoded 5-digit letter size	Piece	2.9	N.A.
Pre-barcoded flats	Piece	2.7	N.A.
From 3 Digit:			
Pre-barcoded letter size	Piece	N.A.	5.1
Pre-barcoded flats	Piece	N.A.	2.9
From 5 Digit:			
Pre-barcoded letter size	Piece	N.A.	5.2
Pre-barcoded flats	Piece	N.A.	2.8

Schedule 421 notes:

[1] The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, non-profit, and classroom periodicals.

[2] Rates do not apply to otherwise regular rate mail that qualifies for the Within-County rates in Schedule 423.2.

[3] Charges are computed by adding the appropriate per-Piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[4] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

[5] Applies to mail delivered within the SCF area of the originating SCF office.

[6] For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

[[7] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.]

[7] Mail not eligible for carrier-route, 5-digit or 3-digit rates.

[8] Applicable to high density mail, deducted from carrier route presort rate.

[9] Applicable to saturation mail, deducted from carrier route presort rate.

[10] For automation compatible mail meeting applicable Postal Service regulations.

PERIODICALS RATE SCHEDULE 423.2 WITHIN COUNTY (FULL RATES)

	Current Rate (cents)	Proposed Rate (cents)
Per Pound:		
General	12.6	13.1
Delivery Office [1]	11.6	11.7
Per Piece:		
Required Presort	8.2	9.0
Presorted to 3-digit	N.A.	8.0
Presorted to 5-digit	N.A.	7.7
Carrier Route	4.4	4.5
Presort		

PERIODICALS RATE SCHEDULE 423.2 WITHIN COUNTY (FULL RATES)—Continued

	Current Rate (cents)	Proposed Rate (cents)
Per Piece Discounts:		
Delivery Office [2]	0.3	0.4
High Density (formerly 125 Piece) [3]	0.5	0.5
Saturation	0.7	0.7
Automation Discounts for Automation Compatible Mail [4]		
From Required:		
3-Digit Pre-barcoded Letter size	0.4	N.A.
5-Digit Pre-barcoded Letter size	1.7	N.A.
Pre-barcoded Letter size	N.A.	2.7
3/5-Digit Pre-barcoded Flats	1.5	N.A.
Pre-barcoded Flat size	N.A.	1.2
From 3-digit:		
Pre-barcoded Letter size	N.A.	1.9
Pre-barcoded Flat size	N.A.	1.4
From 5-digit:		
Pre-barcoded Letter size	N.A.	1.8
Pre-barcoded Flat size	N.A.	1.4

Schedule 432.2 notes:
[1] Applicable only to the Pound charge of carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.
[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.
[3] Applicable to high density mail, deducted from carrier route presort rate.
[4] For automation compatible pieces meeting applicable Postal Service regulations.

PERIODICALS, RATE SCHEDULE 423.3, PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS [10] (FULL RATES)

	Postage rate unit	Current rate [1] (cents)	Proposed rate [1] (cents)
Per Pound:			
Nonadvertising portion	Pound	14.2	15.4
Advertising portion: [9]			
Delivery Office [2]	Pound	16.9	15.8
	Pound	19.0	18.0
1&2	Pound	21.4	20.3
3	Pound	22.4	21.6
4	Pound	25.1	25.1
5	Pound	29.2	30.5
6	Pound	33.6	36.1
7	Pound	38.8	41.6
8	Pound	43.2	47.4
Per Piece: Less Nonadvertising Factor [4]		4.2	4.4
Required Preparation [5]	Piece	21.9	24.4
Presorted to 3-digit city/5-digit	Piece	17.4	N.A.
Presorted to 3-digit	Piece	N.A.	18.5
Presorted to 5-digit	Piece	N.A.	18.3
Presorted to Carrier Route	Piece	10.7	11.3
Discount			
Prepared to Delivery Office [2]	Piece	1.2	1.2
Prepared to SCF [3]	Piece	0.6	0.6
High Density (formerly 125-Piece) [6]	Piece	0.7	2.0
Saturation [7]	Piece	2.1	3.3
Automation Discounts for Automation Compatible Mail [8]			
From Required:			
Pre-barcoded Letter size	Piece	3.0	7.9
Pre-barcoded Flats	Piece	2.4	3.7
From 3/5 Digit:			
3-Digit Pre-barcoded Letter size	Piece	2.3	N.A.
5-Digit Pre-barcoded Letter size	Piece	2.3	N.A.
Pre-barcoded Flats	Piece	2.4	N.A.
From 3-Digit:			
Pre-barcoded Letter size	Piece	N.A.	2.9
Pre-barcoded Flats	Piece	N.A.	2.6
From 5-Digit:			
Pre-barcoded Letter size	Piece	N.A.	3.2
Pre-barcoded Flats	Piece	N.A.	2.8

Schedule 423.3 notes:
[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.
[2] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

[3] Applies to mail delivered within the SCF area of the originating SCF office.
[4] For postage calculation, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
[[5] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.]
[5] *Mail not eligible for carrier-route, 5-digit or 3-digit rates.*
[6] Applicable to high density mail, deducted from carrier route presort rate.
[7] Applicable to saturation mail, deducted from carrier route presort rate.
[8] For automation compatible mail meeting applicable Postal Service regulations.
[9] Not applicable to publications containing 10 percent or less advertising content.
[10] If qualified, nonprofit publications may use Within-County rates for applicable portions of a mailing.

PERIODICALS, RATE SCHEDULE 423.4, CLASSROOM PUBLICATIONS [10] (FULL RATES)

	Postage rate unit	Current rate [1] (cents)	Oct 5 '97 rate [1] (cents)	Proposed rate [1] (cents)
Per Pound:				
Nonadvertising Portion	Pound	11.3	14.2	15.4
Advertising Portion:[9]				
Delivery Office [2]	Pound	18.0	16.9	15.8
SCF [3]	Pound	19.1	19.0	18.0
1&2	Pound	21.2	21.4	20.3
3	Pound	22.3	22.4	21.6
4	Pound	25.0	25.1	25.1
5	Pound	29.2	29.2	30.5
6	Pound	33.5	33.6	36.1
7	Pound	38.8	38.8	41.6
8	Pound	43.2	43.2	47.4
Per Piece: Less Nonadvertising Factor [4]		3.5	4.2	4.4
Required Preparation [5]	Piece	17.1	21.9	24.4
Presorted to 3-digit city/5-digit	Piece	12.8	17.4	N.A.
Presorted to 3-digit	Piece	N.A.	N.A.	18.5
Presorted to 5-digit	Piece	N.A.	N.A.	18.3
Presorted to Carrier Route	Piece	9.0	10.7	11.3
Discounts:				
Prepared to Delivery Office [2]	Piece	0.5	1.2	1.2
Prepared to SCF	Piece	0.3	0.6	0.6
High Density (formerly 125-Piece) [6]	Piece	0.2	0.7	2.0
Saturation [7]	Piece	0.7	2.1	3.3
Automation Discounts for Automation Compatible Mail [8]				
From Required:				
ZIP+4 Letter size	Piece	0.7	N.A.	N.A.
Pre-barcoded Letter size	Piece	1.7	3.0	7.9
Pre-barcoded Flats	Piece	2.3	2.4	3.7
From 3/5 Digit:				
ZIP+4 Letter size		0.4	N.A.	N.A.
3-Digit Pre-barcoded Letter size	Piece	1.0	2.3	N.A.
5-Digit Pre-barcoded Letter size	Piece	1.7	2.3	N.A.
Pre-barcoded Flats	Piece	1.5	2.4	N.A.
From 3 Digit:				
Pre-barcoded Letter size	Piece	N.A.	N.A.	2.9
Pre-barcoded Flats	Piece	N.A.	N.A.	2.6
From 5 Digit:				
Pre-barcoded Letter size	Piece	N.A.	N.A.	3.2
Pre-barcoded Flats	Piece	N.A.	N.A.	2.8

Schedule 423.4 notes:
[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.
[2] Applies to carrier route (including 125-piece walk sequence and saturation) mail delivered within the delivery area of the originating post office.
[3] Applies to mail delivered within the SCF area of the originating SCF office.
[4] For postage calculation, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
[[5] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.]
[5] Mail not eligible for carrier-route, 5-digit, or 3-digit rates.
[6] For walk sequenced mail in batches of 125 pieces or more from carrier route presorted mail.
[7] Applicable to saturation mail; deducted from carrier route presort rate.
[8] For automation compatible mail meeting applicable Postal Service regulations.
[9] Not applicable to publications containing 10 percent or less of advertising content.
[10] If qualified, classroom publications may use Within-County rates for applicable portions of a mailing.

FEE SCHEDULE 911.—ADDRESS CORRECTIONS

Description	Fee	
	Proposed	Current
Per manual correction	$0.50	$0.50

FEE SCHEDULE 911.—ADDRESS CORRECTIONS—Continued

Description	Fee	
	Proposed	Current
Per automated correction	.20	.20

FEE SCHEDULE 912.—ZIP CODING OF MAILING LISTS

	Fee	
	Proposed	Current
Per thousand addresses	$70.00	$60.00
Correction of Mailing Lists		
Per submitted address	$0.20	$0.17
Minimum charge per list corrected	$7.00	$5.50
ADDRESS CHANGES FOR ELECTION BOARDS AND REGISTRATION COMMISSIONS		
Per change of address	$0.20	$0.17
CORRECTIONS ASSOCIATED WITH ARRANGEMENT OF ADDRESS CARDS IN CARRIER DELIVERY SEQUENCE		
Per Correction	$0.20	$0.17

Note: When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

Fee Schedule 921, Post Office Boxes and Caller Service

I. Semi-annual Box Fees [1]

Box Size [2]	Fee group									
	A Proposed	Current	B Proposed	Current	C Proposed	Current	D [& E [3]] Proposed	Current	E [3]	
									Proposed	Current
1	$35.00	$24	$30.00	22	$22.50	$20	$9.00	$6.00	$0	N.A.
2	52.50	37	45.00	33	32.50	29	15.00	10.00	0	N.A.
3	92.50	64	75.00	56	57.50	52	27.50	18.00	0	N.A.
4	162.50	121	145.00	109	97.50	86	40.00	26.50	0	N.A.
5	275.00	209	217.50	186	162.50	144	62.50	41.50	0	N.A.

[1] A customer ineligible for carrier delivery may obtain a post office box at [no charge] *Group E fees,* subject to administrative decisions regarding customer's proximity to post office.

[2] Box Size 1 = under 296 cubic inches; 2 = 296–499 cubic inches; 3 = 500–999 cubic inches; 4 = 1000–1999 cubic inches; 5 = 2000 cubic inches and over.

[[3] Group E post office box customers subject to these fees are those eligible for carrier delivery.]

Fee Group	Fee	
	Proposed	Current
II. Semi-annual Caller Service Fees:		
A	$275	$250
B	$275	$240
C	$275	$225
D	$275	$225
III. Annual Call Number Reservation Fee:		
(all applicable Fee Groups)	$40	$30

FEE SCHEDULE 931, BUSINESS REPLY MAIL

	Fee [1]	
	Proposed	Current
Active business reply advance deposit account:		
Per piece:		
Pre-barcoded	NA	$0.02
Qualified	0.06	.02
Nonletter-size, using reverse manifest (experimental)	.02	.02

FEE SCHEDULE 931, BUSINESS REPLY MAIL—Continued

	Fee [1]	
	Proposed	Current
Nonletter-size, using weight averaging (experimental)	.03	.03
Other	.08	.10
Payment of postage due charges if active business reply mail advance deposit account not used:		
Per piece	.30	.44
Annual License and Accounting Fees:		
Accounting Fee for Advance Deposit Account	300	205
Permit fee (with or without Advance Deposit Account)	100	85
Monthly Fees for customers using a reverse manifest or weight averaging for nonletter-size business reply:		
Nonletter-size, using reverse manifest (experimental)	1,000	1,000
Nonletter-size, using weight averaging (experimental)	3,000	3,000
Set-up/Qualification fee for customers using a reverse manifest or weight averaging for nonletter-size business reply		
Nonletter-size, using reverse manifest (experimental)	1,000	1,000
Nonletter-size, using weight averaging (experimental)	3,000	3,000

[1] Experimental per piece, monthly, and set-up/qualification fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire June 7, 1999.

FEE SCHEDULE 932, MERCHANDISE RETURN

	Fee	
	Proposed	Current
Per Transaction:.		
Shipper must have an advance deposit account (see DMCS Schedule 1000)	$0.30	$0.30

FEE SCHEDULE 933, ON-SITE METER SETTING

		Fee	
		Proposed	Current
First Meter	By appointment	$27.50	$27.50
	Unscheduled request	31.00	31.00
Additional meters		4.00	3.25
Checking meter in or out of service (per meter)		8.50	7.50

FEE SCHEDULE 934, PREPAID REPLY MAIL

	Fee
Annual Permit Fee	$100
Monthly Accounting Fee	1,000

FEE SCHEDULE 941, CERTIFIED MAIL

Description	Fee (in addition to postage)	
	Proposed	Current
Service (per mailpiece)	$1.55	$1.35

FEE SCHEDULE 942, REGISTERED MAIL

Declared value of article[1]	Fees[2] (in addition to postage)		Handling charge
	Proposed	Current	
$0.00 to $100	N/A	$4.85 (without insurance)	None.
0	7.30	N.A.	Do.
0.00 to 100	N/A	4.95 (with insurance)	Do.
0.01 to 100	7.45	N.A	Do.
100.01 to 500	8.15	5.40	Do.
500.01 to 1,000	8.85	5.85	Do.
1,000.01 to 2,000	9.55	6.30	Do.
2,000.01 to 3,000	10.25	6.75	Do.

FEE SCHEDULE 942, REGISTERED MAIL—Continued

Declared value of article[1]	Fees[2] (in addition to postage)		Handling charge
	Proposed	Current	
3,000.01 to 4,000	10.95	7.20	Do.
4,000.01 to 5,000	11.65	7.65	Do.
5,000.01 to 6,000	12.35	8.10	Do.
6,000.01 to 7,000	13.05	8.55	Do.
7,000.01 to 8,000	13.75	9.00	Do.
8,000.01 to 9,000	14.45	9.45	Do.
9,000.01 to 10,000	15.15	9.90	Do.
10,000.01 to 11,000	15.85	10.35	Do.
11,000.01 to 12,000	16.55	10.80	Do.
12,000.01 to 13,000	17.25	11.25	Do.
13,000.01 to 14,000	17.95	11.70	Do.
14,000.01 to 15,000	18.65	12.15	Do.
15,000.01 to 16,000	19.35	12.60	Do.
16,000.01 to 17,000	20.05	13.05	Do.
17,000.01 to 18,000	20.75	13.50	Do.
18,000.01 to 19,000	21.45	13.95	Do.
19,000.01 to 20,000	22.15	14.40	Do.
20,000.01 to 21,000	22.85	14.85	Do.
21,000.01 to 22,000	23.55	15.30	Do.
22,000.01 to 23,000	24.25	15.75	Do.
23,000.01 to 24,000	24.95	16.20	Do.
24,000.01 to 25,000	25.65	16.65	Do.
25,000.01 to $1 million	25.65	16.65	Plus [45] 70 cents for each $1,000 (or fraction thereof) over $25,000.
Over $1 million to $15 million	708.15	455.40	Plus [45] 70 cents for each $1,000 (or fraction thereof) over $1 million.
Over $15 million	10,508.15	6,755.40	Plus Amount determined by the Postal Service based on weight, space and value.

[1] Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.
[2] Fees for articles with declared values of more than $100 include insurance.

FEE SCHEDULE 943, INSURED MAIL

Document reconstruction coverage	Fee (in addition to postage)
Part a—Express Mail Insurance	
$0.01 to $500	No charge.

[Declared Value] *Coverage*	Fee (in addition to postage)	
	Proposed	Current
Merchandise:		
$0.01 to $ 500	No charge	No charge.
500.01 to 5000	$1.00 for each $100 (or fraction thereof) over $500 in value.	$0.90 for each $100 (or fraction thereof) over $500 in value.

[Declared Value] *Coverage*	Fee[1] (in addition to postage)	
	Proposed	Current
	Part b—General Insurance	
$0.01 to $50	$0.95	$0.75.
50.01 to $100	1.90	1.60.
100.1 to $5000	1.90 plus $1.00 for each $100 (or fraction thereof) over $100 in [declared value] *coverage*.	1.60 plus $0.90 for each $100 (or fraction thereof) in declared value.

[1] For bulk insurance, deduct $0.40 per piece.

FEE SCHEDULE 944, COLLECT ON DELIVERY

	Fee (in addition to postage)	
	Proposed	Current
Amount to be collected, or insurance coverage desired:		
$0.01 to $50	$4.00	$3.50

FEE SCHEDULE 944, COLLECT ON DELIVERY—Continued

	Fee (in addition to postage)	
	Proposed	Current
50.01 to 100	5.00	4.50
100.01 to 200	6.00	5.50
200.01 to 300	7.00	6.50
300.01 to 400	8.00	7.50
400.01 to 500	9.00	8.50
500.01 to 600	10.00	9.50
Notice of nondelivery of COD	3.00	2.80
Alteration of COD charges or designation of new addressee	3.00	2.80
Registered COD	4.00	3.50

FEE SCHEDULE 945, RETURN RECEIPTS

Description	Fee (in addition to postage)	
	Proposed	Current
Receipt Issued at Time of Mailing: [1]		
Items other than Merchandise	$1.45	$1.10
Merchandise (without another special service)	1.70	1.20
Receipt Issued after Mailing [2]	7.00	6.60

[1] This receipt shows the signature of the person to whom the mailpiece was delivered, the date of delivery and the delivery address, if such address is different from the address on the mailpiece.
[2] This receipt shows to whom the mailpiece was delivered and the date of delivery.

FEE SCHEDULE 946, RESTRICTED DELIVERY

	Fee (in addition to postage)	
	Proposed	Current
Per Piece	$2.75	$2.75

FEE SCHEDULE 947, CERTIFICATE OF MAILING

	Fee (in addition to postage)	
	Proposed	Current
Individual pieces:		
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece)	$0.60	$0.55
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	.25	.20
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	.60	.55
Bulk pieces:		
Identical pieces of First-Class and Single Piece, Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:		
Up to 1,000 pieces (one certificate for total number)	3.00	2.75
Each additional 1,000 pieces or fraction	.40	.35
Duplicate copy	.60	.55

FEE SCHEDULE 948, DELIVERY CONFIRMATION

Service	Fee (in addition to postage)
Used in Conjunction with Priority Mail:	
Electronic	$0.00
Manual	0.35
Used in Conjunction with Parcel Post, Bound Printed Matter, Library, and Special Standard Mail:	
Electronic	0.25

FEE SCHEDULE 948, DELIVERY CONFIRMATION—Continued

Service	Fee (in addition to postage)
Manual	0.60

FEE SCHEDULE 951, PARCEL AIR LIFT

	Fee (In addition to Parcel Post postage)	
	Proposed	Current
Up to 2 pounds	$0.45	$0.40
Over 2 up to 3 pounds	0.85	0.75
Over 3 up to 4 pounds	1.30	1.15
Over 4 pounds	1.75	1.55

FEE SCHEDULE 952, SPECIAL HANDLING

	Fee (In addition to postage)	
	Proposed	Current
Not more than 10 pounds	$17.25	$5.40
More than 10 pounds	24.00	7.50

FEE SCHEDULE 961, STAMPED ENVELOPES

	Description	Fee (in addition to postage)	
		Proposed	Current
Single Sale		$0.07	$0.06
Single Sale Hologram		0.08	0.06
Plain Bulk (500) #6¾ size:	Regular	8.50	8.20
	Window	8.50	9.00
Printed Bulk (500) #6¾ size	Regular	14.00	12.60
	Window	14.00	13.40
Banded (500) #6¾ size		9.50	8.20
Plain Bulk (500) size > #6¾ through #10	Regular	11.50	12.00
	Window	11.50	13.00
Printed Bulk (500) size > #6¾ through #10	Regular	15.00	16.40
	Window	15.00	17.40
	Savings Bond	15.00	15.00
	Hologram	19.00	16.40
Banded (500) size > #6¾ through #10:		12.00	13.00
Multi-Color Printing (500) #6¾ size[1]		14.00	10.50
#10 size[1]		15.00	15.00
Printing Charge per 500 Envelopes (for each type of printed envelope):			
Minimum Order (500 envelopes)		N.A.	4.40
Order for 1,000 or more envelopes		N.A.	4.40
Double Window (500)—size > #6¾ through #10[1]		11.50	15.00
Household (50): size #6¾	Regular	3.00	3.00
	Window	3.00	3.10
Size > #6¾ through #10	Regular	3.25	3.20
	Window	3.25	3.30
	Hologram	3.50	3.20

Notes:
[1] Fee for precancelled envelopes is the same.

FEE SCHEDULE 962, STAMPED CARDS

Description	Fee (in addition to postage)	
	Proposed	Current
Stamped Card	$0.02	$0.00

FEE SCHEDULE 962, STAMPED CARDS—Continued

Description	Fee (in addition to postage)	
	Proposed	Current
Double Stamped Card	0.04	0.00

FEE SCHEDULE 971, MONEY ORDERS

	Proposed	Current
Domestic:		
$0.01 to $700	$0.85	$0.85
APO–FPO:		
$0.01 to $700	0.30	0.30
Inquiry Fee, which includes the issuance of copy of a paid money order	2.75	2.75

SCHEDULE 1000

Fees	Proposed	Current
First-Class Presorted Mailing [Fee]	$100.00	$85.00
Periodicals [Fees]		
A. Original Entry	305.00	305.00
B. Additional Entry	50.00	85.00
C. Re-entry	50.00	50.00
D. Registration for News Agents	50.00	50.00
Regular, Enhanced Carrier Route, *Nonprofit,* and Nonprofit *Enhanced Carrier Route* Standard Mail Bulk Mailing [Fee]	100.00	85.00
Parcel Post: Destination BMC, *SCF, and DDU*	100.00	85.00
Special Standard Mail Presorted Mailing [Fee]	100.00	85.00
Authorization to Use Permit Imprint	100.00	85.00
Merchandise Return (per facility receiving merchandise return labels)	100.00	85.00
Business Reply Mail Permit (see Fee Schedule 932)	.....	85.00

Phasing Schedules

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, STANDARD MAIL RATE SCHEDULE 321.4A, NONPROFIT SUBCLASS, PRESORT CATEGORIES

	Rate (cents)	
	Step 5	Step 6
Letter Size:		
Piece Rate		
Basic	16.0	16.5
3/5-Digit	13.8	14.3
Destination Entry Discount per Piece		
BMC	1.5	1.5
SCF	1.8	1.8
Non-Letter Size:		
Piece Rate		
Minimum per Piece		
Basic	23.4	23.9
3/5-Digit	17.1	17.6
Destination Entry Discount per Piece		
BMC	1.5	1.5
SCF	1.8	1.8
Pound Rate	55.0	55.0
Plus per Piece Rate		
Basic	12.1	12.6
3/5-Digit	5.8	6.3
Destination Entry Discount per Pound		
BMC	7.2	7.2
SCF	8.8	8.8

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, STANDARD MAIL RATE SCHEDULE 321.4B, NONPROFIT SUBCLASS, AUTOMATION CATEGORIES

	Rate (cents)	
	Step 5	Step 6
Letter Size:		
Piece Rate		
Basic Letter	11.9	12.4
3-Digit Letter	10.7	11.2
5-Digit Letter	9.0	9.5
Destination Entry Discount per Piece		
BMC	1.5	1.5
SCF	1.8	1.8
Flat Size:		
Piece Rate		
Minimum per Piece		
Basic Flat	18.5	19.0
3/5-Digit	15.0	15.5
Destination Entry Discount per Piece		
BMC	1.5	1.5
SCF	1.8	1.8
Pound Rate	55.0	55.0
Plus per Piece Rate		
Basic Flat	7.2	7.7
3/5-Digit Flat	3.7	4.2
Destination Entry Discount per Pound		
BMC	7.2	7.2
SCF	8.8	8.8

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, STANDARD MAIL RATE SCHEDULE 321.5, NONPROFIT ENHANCED CARRIER ROUTE SUBCLASS

	Rate (cents)	
	Step 5	Step 6
Letter Size:		
Piece Rate		
Basic	N/A	9.6
Basic Automated Letter	8.7	9.2
High Density	7.3	7.8
Saturation	6.7	7.2
Destination Entry Discount per Piece		
BMC	1.5	1.5
SCF	1.8	1.8
DDU	2.3	2.3
Non-Letter Size:*		
Piece Rate		
Minimum per Piece		
Basic	N/A	9.6
High Density	N/A	8.6
Saturation	N/A	8.0
Destination Entry Discount per Piece		
BMC	1.5	1.5
SCF	1.8	1.8
DDU	2.3	2.3
Pound Rate	35.0	35.0
Plus per Piece Rate		
Basic	N/A	2.4
High Density	N/A	1.4
Saturation	N/A	0.8
Destination Entry Discount per Pound		
BMC	7.2	7.2
SCF	8.8	8.8
DDU	11.0	11.0

*It is anticipated that in order to comply with 39 U.S.C. Section 3642(d), phased rates will not be implemented for the cells marked N/A. Full rates would apply for these cells.

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE SCHEDULE 323.2: LIBRARY

	Proposed step 5 rates (cents)	Proposed step 6 rates (cents)
First Pound	144	144
Each additional pound through 7 pounds	47	52
Each additional pound over 7 pounds	24	25

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, RATE SCHEDULE 423.2, WITHIN COUNTY

[Step 5 and Step 6 Rates]

	Phase 5 rate (cents)	Phase 6 rate (cents)
Per pound:		
General	13.0	13.1
Delivery Office [1]	11.7	11.7
Per piece:		
Required Presort	9.0	9.0
Presorted to 3-digit	7.9	8.0
Presorted to 5-digit	7.6	7.7
Carrier Route Presort	4.4	4.5
Per piece discounts:		
Delivery Office [2]	0.4	0.4
High Density (formerly 125 piece) [3]	0.4	0.5
Saturation	0.6	0.7
Automation Discounts for Automation Compatible Mail [4]		
From Required:		
Pre-barcoded Letter size	2.8	2.7
Pre-barcoded Flat size	1.3	1.2
From 3-digit:		
Pre-barcoded Letter size	1.9	1.9
Pre-barcoded Flat size	1.3	1.4
From 5-digit:		
Pre-barcoded Letter size	1.8	1.8
Pre-barcoded Flat size	1.4	1.4

Schedule 432.2 notes:

[1] Applicable only to the pound charge of carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.

[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.

[3] Applicable to high density mail, deducted from carrier route presort rate.

[4] For automation compatible pieces meeting applicable Postal Service regulations.

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, PERIODICALS RATE SCHEDULE 423.3, PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS [10]

[Step 5 and Step 6 Rates]

	Postage rate unit	Phase 5 rate [1] (cents)	Phase 6 rate (cents)
Per pound:			
Nonadvertising portion:	Pound	15.3	15.4
Advertising portion: [9]			
Delivery Office [2]	Pound	15.8	15.8
SCF [3]	Pound	18.0	18.0
1&2	Pound	20.3	20.3
3	Pound	21.6	21.6
4	Pound	25.1	25.1
5	Pound	30.5	30.5
6	Pound	36.1	36.1
7	Pound	41.6	41.6
8	Pound	47.4	47.4
Per piece: Less Nonadvertising Factor [4]		4.4	4.4
Required Preparation [5]	Piece	24.3	24.4
Presorted to 3-digit	Piece	18.4	18.5
Presorted to 5-digit	Piece	18.2	18.3
Presorted to Carrier Route	Piece	11.2	11.3
Discounts:			
Prepared to Delivery Office [2]	Piece	1.2	1.2
Prepared to SCF	Piece	0.6	0.6
High Density (formerly 125-Piece) [6]	Piece	2.0	2.0

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, PERIODICALS RATE SCHEDULE 423.3, PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS [10]—Continued

[Step 5 and Step 6 Rates]

	Postage rate unit	Phase 5 rate [1] (cents)	Phase 6 rate (cents)
Saturation [7]	Piece	3.3	3.3
Automation Discounts for Automation Compatible Mail [8] From Required:			
Pre-barcoded Letter size	Piece	7.9	7.9
Pre-barcoded Flats	Piece	3.7	3.7
From 3-Digit:			
Pre-barcoded Letter size	Piece	2.9	2.9
Pre-barcoded Flats	Piece	2.6	2.6
From 5-Digit:			
Pre-barcoded Letter size	Piece	3.2	3.2
Pre-barcoded Flats	Piece	2.8	2.8

Schedule 423.3 notes:

[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[2] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

[3] Applies to mail delivered within the SCF area of the originating SCF office.

[4] For postage calculation, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

[[5] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.]

[5] *Mail not eligible for carrier-route, 5-digit or 3-digit rates.*

[6] Applicable to high density mail, deducted from carrier route presort rate.

[7] Applicable to saturation mail, deducted from carrier route presort rate.

[8] For automation compatible mail meeting applicable Postal Service regulations.

[9] Not applicable to publications containing 10 percent or less advertising content.

[10] If qualified, nonprofit publications may use Within-County rates for applicable portions of a mailing.

SUMMARY OF PROPOSED RATES FOR PHASING SCHEDULE, PERIODICALS RATE SCHEDULE 423.4, CLASSROOM PUBLICATIONS [10]

[Step 5 and Step 6 Rates]

	Postage rate unit	Phase 5 rate [1] (cents)	Phase 6 rate (cents)
Per Pound:			
Nonadvertising Portion:	Pound	15.3	15.4
Advertising Portion: [9]			
Delivery Office [2]	Pound	15.8	15.8
SCF [3]	Pound	18.0	18.0
1&2	Pound	20.3	20.3
3	Pound	21.6	21.6
4	Pound	25.1	25.1
5	Pound	30.5	30.5
6	Pound	36.1	36.1
7	Pound	41.6	41.6
8	Pound	47.4	47.4
Per piece: Less Nonadvertising Factor [4]		4.4	4.4
Required Preparation [5]	Piece	24.3	24.4
Presorted to 3-digit	Piece	18.4	18.5
Presorted to 5-digit	Piece	18.2	18.3
Presorted to Carrier Route	Piece	11.2	11.3
Discounts:			
Prepared to Delivery Office [2]	Piece	1.2	1.2
Prepared to SCF	Piece	0.6	0.6
High Density (formerly 125-Piece) [6]	Piece	2.0	2.0
Saturation [7]	Piece	3.3	3.3
Automation Discounts for Automation Compatible Mail [8]			
From Required:			
Pre-barcoded Letter size	Piece	7.9	7.9
Pre-barcoded Flats	Piece	3.7	3.7
From 3 Digit:			
Pre-barcoded Letter size	Piece	2.9	2.9
Pre-barcoded Flats	Piece	2.6	2.6
From 5 Digit:			
Pre-barcoded Letter size	Piece	3.2	3.2
Pre-barcoded Flats	Piece	2.8	2.8

Schedule 423.4 notes:

[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[2] Applies to carrier route (including 125-piece walk sequence and saturation) mail delivered within the delivery area of the originating post office.
[3] Applies to mail delivered within the SCF area of the originating SCF office.
[4] For postage calculation, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
[[5] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.]
[5] *Mail not eligible for carrier-route, 5-digit or 3-digit rates.*
[6] For walk sequenced mail in batches of 125 pieces or more from carrier route presorted mail.
[7] Applicable to saturation mail, deducted from carrier route presort rate.
[8] For automation compatible mail meeting applicable Postal Service regulations.
[9] Not applicable to publications containing 10 percent or less of advertising content.
[10] If qualified, classroom publications may use Within-County rates for applicable portions of a mailing.

Attachment C—Hearing Schedule: Postal Rate and Fee Changes

July 30, 1997—First Prehearing Conference
September 3, 1997—Identify expected amount of oral cross-examination. Report on the availability of witnesses
September 3, 1997—Completion of discovery on the Postal Service's direct case
September 22–October 1 and October 6–10, 1997—Hearings for cross-examination of the Postal Service's direct case (9:30 a.m. in the Commission hearing room)
October 20, 1997—Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
November 19, 1997—Identify expected amount of oral cross-examination. Report on the availability of witnesses
November 18, 1997—Completion of discovery directed to intervenors and the OCA
December 8–23, 1997—Evidentiary hearings on the cases-in-chief of intervenors and the OCA (9:30 a.m. in the Commission hearing room)
December 23, 1997—Completion of discovery directed to the Service
January 12, 1998—Filing of evidence in rebuttal to the cases-in-chief of participants other than the Postal Service (no discovery permitted on this rebuttal evidence; only oral cross-examination)
January 21–30, 1998—Hearings on rebuttal to participants' direct evidence (9:30 a.m. in the Commission hearing room)
February 12, 1998—Filing of initial briefs
February 23, 1998—Filing of reply briefs
February 26–27, 1998—Oral argument

Attachment D—Special Rules of Practice

1. Evidence

A. Case-in-chief. A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

B. Exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

C. Motions to strike. Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

D. Designation of evidence from other Commission dockets. Participants may request that evidence received in other Commission proceedings be entered into the record of this proceeding. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designation and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within 7 days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

2. Discovery

A. General. Sections 25, 26 and 27 of the rules of practice apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness.

The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

B. Objections and motions to compel responses to discovery. Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel a more responsive answer, or an answer to an interrogatory or request for admission to which an objection was interposed, if the objection is overruled. Motions to compel should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided in the text or as an attachment to the motion to compel.

Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

C. Answers to interrogatories. Answers to discovery are to be filed within 14 days of the service of the discovery request. Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question.

Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit.

D. Follow-up interrogatories. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

E. Discovery to obtain information available only from the Postal Service. Sections 25 through 27 of the rules of practice allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

3. Service

A. Receipt of documents. The Service List shall contain the name and address of up to two individuals entitled to receive copies of documents for each participant. If possible that entry will also include a telephone number and facsimile number.

B. Service of documents. Documents shall be filed with the Commission and served upon parties in accordance with sections 9 through 12 of the Commission's rules of practice. Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Word Perfect 5.1 or any version of Microsoft Word, and is formatted in Arial 12 font, in lieu of the requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of 1 (one) printed original and 3 (three) hard copies.

C. Exceptions to general service requirements for certain documents. Designations of written cross-examination, notices of intent to conduct oral cross-examination, and notices of intent to participate in oral argument need to be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service.

Discovery requests, objections and answers thereto need to be served on the Commission, the OCA, the Postal Service, and the complementary party, and on any other participant so requesting, as provided in sections 25–27 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

D. Document titles. Parties should include titles that effectively describe the basic content of any filed documents. Where applicable, titles should identify the issue addressed and the relief requested. Transmittal documents should identify the answers or other materials being provided.

4. Cross-Examination

A. Written cross-examination. Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence.

Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).'' When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

B. Oral cross-examination. Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Requests for permission to conduct oral cross-examination should be served three or more working days before the announced appearance of a witness and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits.

Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be provided to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

5. General

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony adverse to the participant conducting the cross-examination.

Library references may be submitted when documentation or materials are too voluminous reasonably to be distributed. Each party should sequentially number items submitted as library references and provide each item with an informative title. Parties are to file and serve a separate Notice of Filing of Library Reference(s). Library material is not evidence unless and until it is designated and sponsored by a witness.

[FR Doc. 97–19230 Filed 7–22–97; 8:45 am]

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federal register

Wednesday
July 23, 1997

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Final Regulatory Alternatives for the 1997–98 Duck Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1997–98 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This supplement to the proposed rule also provides the Service's final regulatory alternatives for the 1997–98 duck hunting season.

DATES: The comment period for proposed early-season frameworks will end on August 5, 1997; and for late-season proposals on September 4, 1997. The Service will hold a public hearing on late-season regulations August 7, 1997, starting at 9 a.m.

ADDRESSES: The Service will hold a public hearing August 7 in the Department of the Interior's Auditorium, 1849 C Street, NW., Washington, DC. Parties should submit written comments on these proposals and/or a notice of intention to participate in the late-season hearing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, MBMO, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 12054) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1997–98 duck hunting season. The June 6 supplement also provided detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations and the final regulatory alternatives for the 1997–98 duck hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1997–98 season. The Service has considered all pertinent comments received through July 8, 1997, in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. The Service will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 1997.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the March 13 **Federal Register**. The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Presentations at Public Hearing

Five Service employees presented reports on the status of various migratory bird species for which early hunting seasons are proposed. These reports are briefly reviewed below.

Dr. John Bruggink, Eastern Shore and Upland Game Bird Specialist, reported on the 1997 status of the American woodcock. The 1996 recruitment index for the Eastern Region (1.3 immatures per adult female) was 24 percent below the long-term regional average; the recruitment index for the Central Region (1.3 immatures per adult female) also was 24 percent below the long-term regional average. No changes ($P \leq 0.1$) from 1996 levels were detected in the number of woodcock displaying during the 1997 Singing-ground Survey. Trends from the Singing-ground Survey during 1987–97 were negative (-3.6 and -4.4 percent per year for the Eastern and Central regions, respectively; $P<0.01$). There were long-term (1968–97) declines ($P<0.01$) of 2.5 percent per year in the Eastern Region and 1.7 percent per year in the Central Region.

Dr. Graham W. Smith, Chief, Population and Habitat Assessment Section, presented information on 1997 habitat conditions for waterfowl, preliminary estimates of duck abundance, and harvests during the 1996 September special teal seasons. Weather conditions throughout the north central U.S. and most of Canada were cool and moist this spring. Palmer Drought Indices for May 1997 in the north central U.S. and the portions of the prairie provinces of Canada indicated moderate to extreme wetness, similar to conditions in May 1996. The pond estimate for the north central U.S. and prairie Canada was 7.6 million, nearly identical to the estimate for last year. This year's pond count was the third highest recorded, and was 56 percent above the long-term average. Throughout most of the survey area, habitat conditions for nesting waterfowl were good to excellent. There were 2.4 million ponds in the north central U.S. this spring, a figure similar to that of last year but 71 percent above the long-term average. Habitat conditions were good to excellent in much of prairie Canada. Water was abundant, and flooded basins and vegetation around pond margins in some areas. Nevertheless, most areas had sufficient cover for nesting birds. Overall, the pond estimate for prairie Canada was 5.1 million, the third highest recorded and 48 percent above the long-term average. In more northern areas, habitat conditions were ideal for nesting ducks. Generally, water levels in lakes and other impoundments were above average, and cover was abundant around their margins. In Alaska, the breakup of ice generally was earlier than normal. However, breakup on the North Slope was later than average. Generally, conditions in Alaska were favorable for waterfowl. In the eastern survey area, weather in May was wet and cool. Snow persisted into late May and early June in some areas, and spring-like conditions were delayed by about 2

weeks. Above-average runoff inundated many habitats, and caused birds to settle in sites less suitable for successful nesting.

This year the preliminary estimate of total ducks was a record high at 42.6 million birds. Populations of mallard, gadwall, American wigeon, northern shoveler, and northern pintail increased relative to last year. Numbers of green- and blue-winged teal, redhead, canvasback, and scaup were similar to those of last year. Of these species, all but northern pintail and scaup are above long-term averages. The preliminary estimate of the size of the blue-winged teal population this spring is 6.1 million birds, compared to 6.4 million last year.

The 1997 estimate is the second highest recorded, and is 44 percent above the long-term average. The 1996 September teal season in the Mississippi and Central Flyways resulted in the harvest of about 430,000 blue-winged teal, the second consecutive year of record-high harvest for the teal season. The harvest estimate is about 150,000 birds higher than during the 1970's and early 1980's, a period with teal seasons and relatively liberal hunting regulations. However, band-recovery information suggests that harvest rates of blue-winged teal during 1996–97 were similar to or lower than those which occurred during the 1970's and early 1980's.

Mr. David Sharp, Central Flyway Representative, reported on the status and harvests of sandhill cranes. The Mid-Continent Population appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 1997 preliminary spring index, uncorrected for visibility, was 357,248. This index is 12 percent higher than 1996's index of 318,514. The photo-corrected 3-year average for the 1994–96 period was 441,127, which was also 12 percent above the previous year's 3-year running average and within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1996–97; about 21,300 Federal permits were issued and approximately 7,300 permittees hunted one or more times. The number of permittees and active hunters were similar to the previous year's seasons. About 17,030 cranes were harvested in 1996–97, a 17 percent decrease from the previous year's record high estimate. Harvests from Alaska, Canada and Mexico are estimated to be less than 10,000 for 1996–97 sport-hunting seasons. The total North American sport harvest was estimated to be about 29,808. The fall pre-migration survey for the Rocky Mountain Population was 16,938, which is 6 percent larger than the 1995 estimate. Limited special seasons were held during 1996 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, and resulted in an estimated harvest of 448 cranes.

Mr. James R. Kelley, Jr., Wildlife Biologist, reviewed the status of several populations of Canada geese for which the Service is proposing September seasons. In Alaska, five subspecies of Canada geese are hunted including Dusky Canada geese and Cackling Canada geese. Numbers of Dusky Canada geese, which nest primarily in the Copper River Delta of Alaska, have declined steadily since an earthquake in 1964 altered their nesting habitat and resulted in lowered recruitment rates. The January 1995 population index revealed approximately 8,500 geese. Unfortunately, no survey was conducted in January 1996. In 1997, new methodologies were utilized to develop an index to this population. The index from the new method indicated 11,200 geese in January 1997. It should be noted that the 1995 and 1997 estimates are not directly comparable due to differences in methodologies. The Service remains concerned about the continued poor status of this population. The December 1996 survey of Cackling Canada geese could not be completed due to weather and logistical problems. However, this population grew at a rate of approximately 14 percent per year during 1986–95. The 3 other subspecies of Canada geese hunted in Alaska are thought to be at or above objective levels. In the Pacific Flyway, the Rocky Mountain Population of Canada geese decreased 19 percent from 1996 to a level of 91,700 geese. The December 1996 composite index of Great Plains and Western Prairie Populations of Canada geese in the Central Flyway was 453,400 birds, which represents a 12 percent increase from 1995. The population of Mississippi Flyway giant Canada geese has increased at a rate of about 5 percent per year during the last 10 years. In some areas, numbers of giant geese have increased to record-high levels. The situation is similar in the northeastern U.S., where the ''resident'' goose population has more than doubled since 1989 to nearly 933,000 birds. The Service is concerned about the rapid growth rate and large sizes of resident Canada goose populations in parts of the Atlantic and Mississippi Flyways. In some regions, the management of these large populations of resident geese is confounded by the presence of other populations, which are below population objectives. A case in point is the migratory population of Atlantic Canada geese which nests in northern Quebec and winters in the Atlantic Flyway. The number of breeding pairs of Atlantic Canada geese declined from 118,000 in 1988 to only 29,000 in 1995. In 1996 the number of breeding pairs increased 58 percent to a level of 46,000. The Service recognizes the challenge facing management agencies which are striving to increase migrant populations, while simultaneously attempting to control resident populations.

Mr. David Dolton, Western Shore and Upland Game Bird Biologist, presented the mourning dove population status. The report summarized call-count information gathered over the past 32 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 32-year period. Between 1996 and 1997, the average number of doves heard per route declined in the Eastern Management Unit and increased in the Central Unit. No change was evident in the Western Management Unit. Over the most recent 10 years, significant downward trends were found in dove populations in the Eastern and Central Units. No trend was indicated for the Western Unit. Over the entire 32-year period, a significant downward trend was found in the Central and Western Units while no trend was indicated in the Eastern Unit.

Mr. Dolton also presented the status of white-winged doves. In Arizona, the 1997 call-count index of 31.0 doves heard per route was essentially the same as the index of 31.1 doves per route in 1996. In the Lower Rio Grande Valley of Texas, the total number of whitewings estimated to be breeding in Cameron, Willacy, Hidalgo, and Starr counties was about 389,000. This is about the same as the 1996 estimate of 392,000. Additionally, about 24,000 whitewings were estimated to be nesting in West Texas, 67,000 in the Lake Corpus Christi area, and 635,000 nesting throughout a 13-county area in Upper South Texas. Whitewings are continuing to increase in density and distribution. For example, in San Antonio, whitewing numbers have gone from 174,000 in 1989 to 271,000 in 1997. The remainder of South Texas has increased from 95,000 in 1989 to 364,000 in 1997. New sightings of whitewings have been reported during the past year in Wichita Falls and Amarillo. Last year, whitewings were 60 miles south of Wichita Falls and about 100 miles south of Amarillo.

Next, Mr. Dolton reported on white-tipped doves in Texas. In 1997, an average of 0.61 whitetips were heard per stop on 348 rural brush locations. This is 28 percent below that recorded in 1996.

Last, Mr. Dolton presented information on band-tailed pigeons. For the Coastal Population, the Breeding Bird Survey indicated that there was a significant decline between 1968 and 1996. There has also been a significant decline over the most recent 10-year period, 1986–96. Late August mineral spring counts conducted in Oregon at 10 selected sites indicated that the pigeon population decreased 1 percent between 1995 and 1996 from 9,753 to 8,874. Washington's call-count survey showed a nonsignificant increase of 36 percent between 1995 and 1996. A nonsignificant decline is evident in the population from 1975–96. However, there has been a significant increase over the most recent 5 years, 1992–96. Bag limits and season lengths continue to be restricted. In Oregon, the 1995 harvest estimate was 2,100 birds while, in California, it was 18,300. For the Interior Population, Breeding Bird Survey data indicated a stable population between 1968 and 1996 with no trend being evident. The same was true for the most recent 10-year period. The combined harvest for the Four-corners States in 1996 was 723 birds. This was less than the 1,600 taken in 1995 and well below the harvest in earlier years which ranged up to 6,000 birds.

Comments Received at Public Hearing

Bill Goudy, representing the Ruffed Grouse Society, commented that the Service's recommendation regarding woodcock was disturbing because of the potential loss of hunting opportunity. He believed that the data used to make the decision were flawed, therefore any decision based on these data was also flawed. He further commented that the proposed reduction in the daily bag limit was not a serious concern for most hunters, but that States such as Minnesota and Michigan will be concerned about the framework opening date. He urged the Service to consider allowing States the use of zoning to lessen the impact associated with the proposed reduction in days.

Charles Kelley, Director of the Game and Fish Division of the Alabama Department of Conservation and Natural Resources, commended the Service for the implementation of a youth waterfowl hunting day. He further asked that the Service work with the States to address the woodcock habitat problem.

Written Comments Received

The preliminary proposed rulemaking, which appeared in the March 13 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 6 **Federal Register**, defined the public comment period for the Service's proposed regulatory alternatives for the 1997–98 duck hunting season. The public comment period for the proposed alternatives ended July 3, 1997. Early-season comments and comments pertaining to the proposed regulatory alternatives are summarized below and numbered in the order used in the March 13 **Federal Register**. Only the numbered items pertaining to early seasons items and the proposed regulatory alternatives for which written comments were received are included.

The Service received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: Several individuals from Tennessee and Mississippi recommended either a noon or 1:00 p.m. closing time for duck hunting, citing positive benefits to the duck population and law enforcement.

An individual from Minnesota urged elimination of the 4:00 p.m. closing time in Minnesota.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. Harvest Strategy Considerations

On March 13, 1997, the Service published for public comment recommendations from the Adaptive Harvest Management (AHM) technical working group regarding modification of the regulatory alternatives for duck hunting (62 FR 12054). On June 6, 1997, the Service published the proposed regulatory alternatives for the 1997–98 duck hunting season (62 FR 31298). Significant proposed changes from the alternatives utilized in 1996–97 included: (1) addition of a ''very restrictive'' alternative; (2) additional days and a higher total-duck daily bag limit in the ''moderate'' and ''liberal'' alternatives; and (3) an increase in the daily bag limit of hen mallards in the ''moderate'' and ''liberal'' alternatives.

Council Recommendations: All four Flyway Councils generally endorsed the regulatory alternatives recommended by the AHM technical working group that were identified in the March 13, 1997, **Federal Register**. Modifications recommended by the Councils were identified and discussed in the June 6, 1997, **Federal Register**. The recommendations are reiterated below and modified where necessary based on subsequent comments received from the Flyway Councils.

The Atlantic Flyway Council originally endorsed the four regulatory alternatives for the Atlantic Flyway, with the exception of the total duck bag limit and hen mallard bag limit restrictions (see further discussion in *E. Bag Limits*). In a subsequent letter, the Council expressed preference for the AHM working group's originally recommended overall daily bag limits (with the exception of hen mallard restrictions) over those proposed by the Service in the June 6 **Federal Register**. The Council considers the 1997–98 alternatives as interim pending the final development and experimentation with population models for eastern mallards. However, the Council was not opposed to holding these alternatives constant for a period of years once a satisfactory set of alternatives is developed for the Flyway.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council endorsed the regulatory alternatives for the Mississippi Flyway for the 1997–98 season, with the Lower-Region Regulations Committee also recommending an experimental later framework closing date (see further discussion in *B. Framework Dates*).

The Central Flyway Council endorsed the regulatory alternatives with the exception of recommending a harvest strategy for pintails and an earlier framework opening date for northern states (see further discussions in *B. Framework Dates* and *G. Special Seasons/Species Management, ii. Pintails*).

The Pacific Flyway Council endorsed the working group's recommended alternatives with several modifications. The Council recommended minor

changes in season length and the hen mallard bag limit and adoption of an interim pintail harvest strategy (see further discussion in *C. Season Length, E. Bag Limits* and *G. Special Seasons/ Species Management, ii. Pintails*).

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, conveyed the Flyway's commitment to Adaptive Harvest Management and endorsed the Service's regulatory packages for 1997. However, he asked that the packages for the Atlantic Flyway be considered interim until the completion of eastern mallard models in 1998. Further, he asked that the Service consider dropping the hen restriction on mallards for the liberal package since there is no historical precedent in the Atlantic Flyway and no biological data to suggest that there would be any negative impacts to the mallard population.

Written Comments: The New Jersey Division of Fish, Game and Wildlife (New Jersey) endorsed the Service's proposed alternatives for the 1997–98 season with the total daily bag limits (with the exception of hen mallard restrictions) originally recommended by the AHM working group. New Jersey considers the 1997–98 alternatives as interim pending the final development and experimentation with population models for eastern mallards. However, New Jersey was not opposed to holding these alternatives constant for a period of years once a satisfactory set for the Flyway is agreed upon.

The Minnesota Department of Natural Resources (Minnesota) and the Wisconsin Department of Natural Resources supported the alternatives proposed by the AHM technical working group. Minnesota's support of the alternatives is based on their firm support of the AHM process, which should bring more science, better decisions and less politics into the regulations-setting process, although they believe that the proposed ''liberal'' alternative essentially changes the allocation of harvest, providing additional opportunity to mid-latitude and southern States while limiting Minnesota hunter opportunities due to typical freeze-up dates.

The Missouri Department of Conservation (Missouri) supported the working group's recommendations and further supported any change among the various options that provided a consistent, science-based approach to waterfowl management. Missouri further commented that the strengths of AHM are the shared objectives and improved use of available information. Missouri believes that State and region-specific proposals generated outside the AHM process jeopardize these improvements in the decision-making process. In a subsequent comment, Missouri expressed belief that the Service's June 6 **Federal Register** was a balance among State and Flyway preferences and that no set of regulatory alternatives would provide the degree of resource protection desired by some or the amount of hunting opportunity preferred by others. They further hoped that the Service and the Flyways could continue to address the priority needs for AHM without allowing distractions such as frameworks, zones/split seasons and special seasons to stall progress.

The South Carolina Department of Natural Resources supported the AHM working group's recommended alternatives.

The Texas Parks and Wildlife Department (Texas) requested that the Service extend the comment period on the regulatory alternatives to allow the four Flyway Councils time to meet and reflect on the proposed options, as well as discuss their respective interests in future AHM priorities. Texas believes that the guidance and support from the Central Flyway Council to the Service will improve when the Council has the opportunity to meet again and review the options.

The Indiana Department of Natural Resources affirmed their approval of the proposed alternatives for the 1997–98 season. They believed that the alternatives were biologically sound and should aid in providing a better understanding of the impacts of regulations on harvest. They further felt that any changes to the alternatives that could affect the predictive capability of the models would not be in the best interest of the AHM process at this time.

Governor Kirk Fordice of Mississippi supported the recommendations of the Lower-Region Regulations Committee of the Mississippi Flyway Council. He further supported the ''liberal'' alternative's days and bag limit but was concerned that the alternative offered little additional benefits to extreme northern States and extreme southern States, while providing additional benefits to mid-latitude States.

The North American Waterfowl Federation (NAWF) supported the development and implementation of AHM in setting waterfowl regulations but did not support the proposed liberalizations regarding increases in season lengths and bag limits. NAWF believed that extensive changes were premature and did not provide adequate consideration for population impacts. NAWF pointed out that several species of waterfowl had not yet reached population goals and that additional harvest did not appear justified. NAWF was also not aware of any initiative or substantial interest among the duck hunting public for an expansion of hunting opportunities and questioned whether the interests of hunters were being represented.

The Delta Wildlife Foundation and the Delta Outfitters Association of Mississippi and the Alabama Waterfowl Association expressed support for the recommendations of the Lower-Region Regulations Committee of the Mississippi Flyway Council.

The Louisiana Wildlife Federation supported the establishment of a ''more'' or ''most'' liberal alternative for those years when duck reproduction was high and the population could support additional harvest.

Delta Waterfowl strongly supported the utilization of AHM in the setting of waterfowl regulations and complimented the Service for developing a process driven by biological parameters. Delta Waterfowl supported the addition of a ''very restrictive'' alternative and the total bag limit increases under the ''moderate'' and ''liberal'' alternatives. However, they did not support the proposed season-length increases for the ''moderate'' and ''liberal'' alternatives, citing concern for species such as pintail and scaup, the growing discrepancy with harvest distribution between northern and southern regions of the flyways, and the lack of interest in such changes from the hunting public.

The Nevada Waterfowl Association suggested that most hunters would prefer lower bag limits with no species restrictions instead of more liberal bag limits and season lengths.

The LaCrosse County Conservation Alliance of Wisconsin recommended that the four alternatives consist of season lengths/bag limits of 30/3, 40/4, 50/5, and 60/6.

The Humane Society of the United States (HSUS) strongly opposed the increased bag limits in the ''moderate'' and ''liberal'' alternatives and the addition of a fourth alternative, ''very restrictive''. HSUS believed these proposals were designed to stimulate hunter interest, maximize license sales, and satisfy state wildlife management agencies.

Several individuals from Louisiana fully supported the proposed alternatives.

Several individuals from Alabama expressed support for the recommendations of the Lower Region Regulations Committee of the Mississippi Flyway Council.

Several individuals from Alabama, Colorado, Illinois, Michigan, Minnesota, Mississippi and Wisconsin believed that the AHM process was far too liberal with respect to the proposed bag limits and season lengths. They believed that these frameworks were ill-advised, inappropriate, and short-sighted. Another individual from Minnesota questioned the AHM process, citing the fact that harvest had increased each year under AHM. He further questioned the need for a ''super-liberal'' alternative and believed that States would be unwilling to actually use the ''conservative'' alternative.

Individuals from Alabama, Tennessee and Louisiana expressed support for the ''liberal'' alternative, while other commenters from California and Kansas supported any expansion of hunting opportunity.

Several individuals from Minnesota and one individual from Louisiana suggested keeping the ''liberal'' alternative at 50 days with a 5-bird daily bag limit. Other commenters from Arkansas, California, Iowa, Kentucky, Minnesota, Pennsylvania, Wisconsin preferred longer seasons and smaller daily bag limits to current seasons and higher bag limits.

An individual from Minnesota urged support for a 30- to 40-day season and a 3- to 5-bird daily bag limit, depending on water conditions.

The California Waterfowl Association supported the addition of a ''very restrictive'' alternative and proposals for extended season lengths under the ''moderate'' and ''liberal'' alternatives.

An individual from Kansas strongly supported the addition of a ''very restrictive'' alternative as a management tool, while a commenter from California believed that this alternative was critical to maintaining wetland habitat in California. Another commenter from Tennessee questioned the need for a fourth alternative.

Individuals from Oregon and Tennessee were concerned about potential increases in mallard harvest given the population status of mallards and recent season liberalizations.

Several individuals from Ohio, California, and Pennsylvania opposed all increases in either daily bag limits or season lengths on moral grounds, with some calling for overall reductions in hunting opportunities.

Service Response: For the 1997–98 regular duck hunting season, the Service will utilize the four regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as ''VERY RES'' for the very restrictive, ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. The Service is convinced that these alternatives will be successful at providing maximum hunting opportunity, while not jeopardizing the ability of duck species to attain population goals when habitat conditions are adequate. The Service will propose a specific regulatory alternative when survey data on waterfowl population and habitat status are available.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council was concerned that extensions of framework dates had the potential to affect all States in all Flyways, including reducing the frequency with which ''liberal'' and ''moderate'' regulatory alternatives would be selected. They were also concerned that the traditional allocation of duck harvest in the U.S. could be altered. They strongly urged the Service to seek a thorough and scientific review by each Flyway Council before taking any action on framework modifications.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow an experimental January 31 framework closing date, as long as it does not affect regulations/framework alternatives in non-participatory States.

The Central Flyway Council recommended a framework opening date of the Saturday nearest September 23 in North Dakota, South Dakota, Montana, Wyoming, Colorado, and Nebraska.

Written Comments: The State of North Dakota provided a concurrent resolution urging the Service to adopt a framework opening date of September 20.

The Alabama Department of Conservation and Natural Resources recommended a framework closing date of January 31 under the ''liberal'' and ''moderate'' alternatives. In lieu of this option, they suggested an experimental season of 3 to 5 years for a limited number of States in order to determine any resulting detrimental effects from the later framework closing date.

The Louisiana Department of Wildlife and Fisheries, the Alabama Department of Conservation and Natural Resources, and the Mississippi Department of Wildlife, Fisheries, and Parks supported the recommendation of the Lower-Region Regulations Committee of the Mississippi Flyway Council for extending the framework closing date to January 31 for the 1997–98 hunting season. They believed that this was an excellent opportunity for the Service to conduct a study regarding the framework extension. In a subsequent letter, they supported the ''liberal'' alternative's days and bag limit, but were very concerned that the alternative offered little additional benefit to extreme northern States and extreme southern States, while providing additional benefit to mid-latitude States. They estimated that a January 31 framework closing date would result in, at most, an increased harvest of 18,500 mallards in Alabama, Louisiana, and Mississippi. Lastly, they believe that present framework dates do not afford their hunters the same hunting opportunities as hunters in mid-latitude States because their States do not have the opportunity to select a hunting season that coincides with the greatest number of birds available to the hunting public.

Senators Trent Lott and Thad Cochran of Mississippi urged support for extending the framework closing date to January 31 in Mississippi with the same number of days and bag limit as other States in the Mississippi Flyway.

Senator Richard Shelby of Alabama urged support for extending the framework closing date to January 31 in Alabama. Senator Shelby believed the current season deprives Alabama hunters of their best opportunity to harvest ducks.

Senator Mary Landrieu of Louisiana supported the recommendation of the Lower-Region Regulations Committee of the Mississippi Flyway Council for extending the framework closing date to January 31 for the 1997–98 hunting season.

Representatives Bennie G. Thompson, Mike Parker, Gene Taylor, Charles Pickering, and Roger Wicker of Mississippi supported the recommendation of the Lower-Region Regulations Committee of the Mississippi Flyway Council for extending the framework closing date to January 31 with the same number of days and bag limit as other States in the Mississippi Flyway.

The Mississippi State Senate adopted a resolution urging the Mississippi U.S. Congressional Delegation to express to the Service the need and support for a duck hunting framework closing date of January 31 for the Mississippi Flyway. The resolution stated that peak duck populations in Mississippi occur from late December through January, a January 31 framework closing date would not adversely impact the survival rate of ducks, and Mississippi hunters were denied the same opportunity to hunt ducks afforded to hunters in the northern and central portions of the Mississippi Flyway.

State Representatives Dick Livingston and Tom Cameron and State Senators

Lynn Posey and Neely Carlton of Mississippi requested a January 31 framework closing date for the Lower Region of the Mississippi Flyway beginning in the 1997–98 hunting season.

State Representative Michael J. Michot of Louisiana requested a January 31 framework closing date for Louisiana for the 1997–98 hunting season.

Governor Kirk Fordice of Mississippi requested a January 31 framework closing date for the Lower Region of the Mississippi Flyway beginning in the 1997–98 hunting season. Governor Fordice stated that the present framework does not afford Mississippi hunters the same hunting opportunities as hunters in mid-latitude States since Mississippi does not have the opportunity to hunt when the greatest number of birds are available to the hunting public.

The City of Grenada, Mississippi, urged consideration of a season ending after the first week in February so as to allow Mississippi hunters the same hunting opportunities afforded other States in the Mississippi Flyway.

The Delta Wildlife Foundation of Mississippi supported the recommendations of the Lower-Region Regulations Committee of the Mississippi Flyway Council for extending the framework closing date to January 31 for the 1997–98 hunting season. They supported the ''liberal'' alternative's days and bag limit, but were concerned that the alternative offered little additional benefits to extreme northern States and extreme southern States, while providing additional benefits to mid-latitude States. They estimated that a January 31 framework closing date would result in, at most, an increased harvest of 18,500 mallards in Alabama, Louisiana, and Mississippi. Lastly, they believe that the present framework does not afford their hunters the same hunting opportunities as hunters in mid-latitude States since their States do not have the opportunity to select a hunting season that coincides with the greatest number of birds available to the hunting public.

The Mississippi Wildlife Federation expressed support for a later framework closing date in January, citing the fact that Mississippi overwinters the third largest number of waterfowl in the Mississippi Flyway, but only ranks 11th out of 14 States in the Flyway in waterfowl harvest.

The Delta Outfitters Association of Mississippi requested that a January 31 framework closing date be approved for the Lower Region of the Mississippi Flyway beginning with the 1997–98 hunting season.

The Alabama Waterfowl Association supported a January 31 framework closing date in Alabama.

One hundred and eighty-three individual commenters and 128 petitioners from Mississippi recommended either a later framework closing date or an extension to January 31. Most commenters believed the majority of waterfowl do not arrive in Mississippi until mid- to late-January after the current season closes. Further, many cited the opinion that due to the Service's unfair frameworks policy, southern waterfowlers are not given the same hunting opportunities as those given to hunters in northern States.

Twenty-three individuals and 11 petitioners from Mississippi recommended a framework closing date extension to February 9. Three individuals from Mississippi recommended a season running through the middle of February.

Thirty-three individuals and eight petitioners from Alabama urged the Service to extend the framework closing date to at least January 31 in Alabama.

The Louisiana Wildlife Federation supported modifying the framework closing date to allow hunting through the last weekend in January, provided that the late-season disturbance was not shown to be an impediment to the overall population or to achieving the NAWMP goals. Twenty-six individuals from Louisiana recommended a duck hunting season closing either at the end of January or in early February.

Commenters from Tennessee also requested a later framework closing date. Three individuals urged the Service to extend the framework closing date to at least January 31 in Tennessee while four other individuals thought the season should be extended until the end of February. One individual simply requested later seasons, while another suggested changing the framework closing date to either the Sunday nearest January 20 or January 20, whichever was later.

Individuals from other States also requested modifications to the framework dates. Individuals in Ohio, Texas, and Virginia recommended a closing date of January 31, while commenters in California, New Jersey, and Florida asked for the season to end later. Individuals in Washington and California recommended closing dates in mid- to late February. Three individuals in Michigan and Minnesota requested a framework opening date of the last Saturday in September rather than the Saturday nearest October 1.

An individual from Montana questioned the Service's conclusions regarding the Iowa early duck season. Specifically, he questioned whether looking at total season harvest was the best way to evaluate the effects of Iowa's experimental seasons (1979–84).

The Minnesota Department of Natural Resources (Minnesota) expressed serious concerns about the proposals to extend framework opening and closing dates, stating that the proposed changes would alter the current distribution of duck harvest within and among Flyways. Minnesota commented that shifting hunting opportunity further to the south through a framework extension would be unacceptable to Minnesota and would allow a reallocation of harvest by default.

The Wisconsin Department of Natural Resources (Wisconsin) did not support modification of the frameworks at this time. Wisconsin stated, however, that if the Service were to seriously consider changing the framework closing date, it must also consider changes to the framework opening date. Wisconsin believed that extending the framework date to the end of January without modifying the opening framework dates would only serve to widen the gap in hunting opportunities currently offered in the Mississippi Flyway. Wisconsin further recommended that the Service establish a timetable and a process to allow a thorough discussion of the implications of framework modification for all Flyways.

Although supporting the proposed alternatives, the Missouri Department of Conservation (Missouri) believed the 1996–97 regulations provided excellent hunting opportunity and would prefer retaining these options rather than any additional wholesale changes in frameworks. Missouri was concerned that the potential biological impacts of framework extensions had not been adequately considered and that a rigorous evaluation would be necessary. Missouri further believed that this was not a high priority for AHM at this time and questioned whether issues of harvest allocation should even be a part of the AHM process, stating that these issues were largely social, not technical. In a subsequent comment letter, Missouri was pleased that the Service adopted the AHM working group's recommendations concerning framework dates and agreed with the assessment that issues of harvest, allocation of hunting opportunity, and biological impacts must be addressed when considering future framework proposals. Missouri continued to question whether frameworks were among the most pressing needs for AHM at this time.

The Virginia Department of Game and Inland Fisheries opposed any

lengthening of the season framework as proposed by the Central Flyway Council and Lower-Region Regulations Committee of the Mississippi Flyway Council. Although sympathetic with the desire of these Flyways to maximize hunting opportunities, they felt that a change of this magnitude requires a thorough review and discussion of the implication for all flyways.

The Georgia Department of Natural Resources voiced concern over the framework extensions proposed by the Central Flyway Council and Lower-Region Regulations Committee of the Mississippi Flyway Council. They believed the increase in the harvest due to the extended frameworks and the potential that this action would lead to more restrictive and variable harvest strategies throughout all Flyways was inappropriate. They further urged the Service to adhere to the 1996 joint Flyway Council recommendation to maintain traditional allocation of hunting opportunities when considering changes to regulatory alternatives. They were also concerned about the potential effect of framework extensions on other species of ducks, such as wood ducks and black ducks and that the potential effects on other species should be closely weighed before considering any framework changes. They requested the Service review framework extensions in a thorough and scientific manner and that the issue receive a thorough review through the Flyway Council process before any changes are considered or implemented.

The Florida Game and Fresh Water Fish Commission (Florida) supported the Service's decision not to extend framework closing dates for the 1997–98 season. Florida further commented that if framework dates were extended, those extension should be made equally available to all Flyways. However, they believed that adjusting framework dates could influence the relative allocation of harvest among States, the size of the harvest, and the population dynamics of waterfowl. Florida believed that this issue merits further evaluation by the Service and the Flyway Councils and asked the AHM working group to evaluate framework extensions for use with the ''liberal'' alternative.

The Delaware Division of Fish and Wildlife (Delaware) concurred with the Service's position on the framework extension issue and requested that no such changes be granted until all four Flyway Councils had adequate time to address the issue. Delaware further commented that the framework extensions proposed by the Central Flyway Council and Lower-Region Regulations Committee of the Mississippi Flyway Council were counter to the 1996 joint Flyway Council recommendation to maintain traditional allocation of hunting opportunities when considering changes to the AHM regulatory alternatives.

The New Jersey Division of Fish, Game and Wildlife (New Jersey) was concerned that any duck hunting framework extensions had the potential to affect all States in all Flyways, including reducing the frequency with which ''liberal'' and ''moderate'' regulatory alternatives would be selected. They were also concerned that the traditional allocation of duck harvest in the U.S. could be altered. They strongly urged the Service to seek a thorough and scientific review by each Flyway Council before taking any action on framework modifications.

The Massachusetts Division of Fisheries and Wildlife (Massachusetts) opposed the extensions of frameworks at this time. Massachusetts believed that the proposed September openings and January 31 framework closing date would impact States throughout the Flyways and has not been adequately examined. Massachusetts was particularly concerned about species such as wood ducks.

The Arizona Game and Fish Department concurred with the Service's June 6 **Federal Register** not to extend the framework closing date to January 31. They believed that although additional harvest likely would occur, such an extension would not be beneficial to the pintail population and would complicate the evaluation of regulatory changes already proposed.

Several individuals from Tennessee and Louisiana expressed strong opposition to extending the framework closing date past January 20, citing concerns for the conditions of the ducks and the lack of hunting opportunity later in January.

The California Waterfowl Association expressed concerns about the impacts of either earlier framework opening dates or later framework closing dates.

Individuals in Pennsylvania and Iowa believed the season in their respective States closed too early. Individuals in California and Oregon expressed support for extending the hunting season.

Service Response: In 1995, the Service established AHM framework opening and closing dates of the Saturday nearest October 1 to the Sunday nearest January 20 for the Pacific, Central, and Mississippi Flyways, and fixed dates of October 1 to January 20 for the Atlantic Flyway (60 FR 50045). In 1996, the Service denied requests for a January 31 closing date in Mississippi, but recognized that the suitability of all aspects of the regulatory alternatives, including framework dates, should be investigated by the AHM technical working group. All four Flyway Councils, in joint recommendations dated July 28, 1996, assigned a high priority to refining the AHM regulatory alternatives and asked the technical working group to draft recommendations prior to the 1997 regulatory cycle. In the fall of 1996, the technical working group circulated a questionnaire to all States seeking input regarding concerns with the current regulatory alternatives. Fifty-four percent of States nationwide believed the current framework dates of approximately October 1 to January 20 were satisfactory, while 32 percent believed the dates were too constrained. Overall, States ranked framework dates as the sixth most important regulatory issue, after issues involving season lengths, bag limits, and the number of regulatory alternatives. The Service recognizes that questionnaires received from Central and Mississippi Flyway States indicated a somewhat higher level of dissatisfaction with established framework dates than the national average.

After extensive deliberation and consideration of input by States and Flyway Councils, the AHM technical working group recommended no change in framework dates from those established in 1995 (62 FR 12054). The Service's Migratory Bird Regulations Committee reviewed the working group's recommendations with the Flyway Council Regulations Consultants at the January 23, 1997, meeting and there were no indications that framework dates of approximately October 1 to January 20 would not be satisfactory to most States. On April 22, 1997, representatives from the Service met with Flyway Council Chairmen and Regulations Consultants to consider the Flyway Councils' recommendations for the AHM regulatory alternatives. Representatives from the Atlantic, Central, and Pacific Flyway Councils, and from the Upper-Region Regulations Committee of the Mississippi Flyway Council, agreed that framework dates should not be extended beyond those currently in use for the 1997–98 season; however, the representatives agreed the issue should be reviewed further by the AHM working group and all four Flyway Councils. Because changes in framework dates have the potential to affect all States (whether or not they set their seasons as early or late as possible), the Service believes that the issue must receive a fair and

comprehensive hearing among all stakeholders. To date, this has not occurred. Therefore, the Service will continue to use framework dates of approximately October 1 to January 20 for all AHM regulatory alternatives for the 1997–98 hunting season, as identified in the June 6 proposed rule.

In considering future requests for either earlier or later framework dates, such as those described above, the Service will focus on the following issues:

(1) Possible changes in the size of the harvest.

Experience with hunting seasons opening more than a few days before October 1 or after January 20 is limited. Mississippi experimented with a January 31 closing date during 1979–84, and Iowa was permitted an opening date for a small portion of their regular duck season of approximately September 20 during 1979–87 and 1994–96 in lieu of an early teal season. Based on a recent Service assessment, harvests of mallards and total ducks were higher in years with framework extensions in both States, relative to surrounding States where a framework extension was not available. If results from these States are representative, then proposals to extend framework dates in the Central Flyway and the Lower Region of the Mississippi Flyway would be expected to increase the harvest of midcontinent mallards by approximately 13 percent. This increase would be in addition to the 10-15 percent increase in mallard harvest expected from the proposed increase in season length under the ''liberal'' alternative. Based on this assessment, adoption of the Central and Mississippi Flyway proposals would lead to a more conservative harvest strategy for all States, whether or not they could take advantage of the extended framework dates. Current projections suggest that the frequency of ''liberal'' regulations could be reduced by as much as one-half, and that the frequency of ''very restrictive'' and ''restrictive'' regulations could double. The Service currently is preparing a final report on this assessment, which should be available by September 1, 1997.

(2) Re-allocation of hunting opportunity and harvest within and among Flyways.

Based on the survey conducted by the AHM technical working group, most States are satisfied with the distribution of hunting opportunity within and among Flyways. Nationwide, concerns regarding allocation of hunting opportunity among States ranked last among those concerns with the current AHM regulatory alternatives. Also, all Flyway Councils passed a joint recommendation (July 28, 1996) asking the Service to maintain traditional allocations of hunting opportunity among Flyways when considering changes to the AHM regulatory alternatives. The Service agrees with the Flyway Councils that resolving outstanding disputes over allocation will require development of an appropriate framework for discussion and that progress is unlikely prior to promulgation of regulations for the 1997 hunting season.

(3) The potential for negative physiological impacts on ducks.

The Service reiterates its concerns that hunting disturbance in late winter may interfere with important biological functions such as pair-bonding and inhibit nutrient acquisition necessary for successful migration and reproduction (61 FR 50664). Information from a recent study of late-winter mate loss among captive-reared mallards by Mississippi State University has not alleviated these concerns because results are preliminary and cannot necessarily be applied to free-ranging mallards or other species.

The Service is concerned about public comments that hunters in the southern Mississippi Flyway are not afforded the same hunting opportunities as their northern counterparts. States of the southern Mississippi Flyway collectively enjoy hunter success (as measured by seasonal duck harvest per hunter) that is higher than that in any region of the country. Moreover, hunter success in the Mississippi Flyway is about twice as high in southern States as in northern and mid-latitude States, and this discrepancy has been increasing over time. Of the six States with the highest hunter success in the country (i.e., States above the 90th percentile for the 1979–95 average), four (Louisiana, Arkansas, Mississippi, and Tennessee) are located in the southern Mississippi Flyway. These statistics do not seem to support the contention that hunters in the southern Mississippi Flyway are not afforded the same opportunity as their counterparts in mid-latitude and northern States.

In summary, the Service is not, at this time, extending framework dates beyond those currently in use. However, the Service seeks further clarification from the Flyway Councils, States, and the public regarding the relative importance of this issue and requests comments concerning the three issues described above. The Service believes strongly that potential changes to framework dates must be approached in a methodical and comprehensive manner, and with due consideration of both biological and sociological impacts.

C. Season Length

Council Recommendations: The Pacific Flyway Council recommended the ''restrictive'' regulatory alternative for their Flyway be modified from 59 days to 60 days.

Written Comments: The Alabama Department of Conservation and Natural Resources recommended the ''very restrictive'' alternative be 23 days rather than 20 days to allow for 4 full weekends of hunting.

The Missouri Department of Conservation supported the proposed change from 59 to 60 days in the ''restrictive'' alternative for the Pacific Flyway.

The California Waterfowl Association supported the addition of 1 day to the ''restrictive'' alternative in the Pacific Flyway.

Several individuals from Minnesota opposed increases in the season length under the ''liberal'' alternative, arguing that it would only benefit the southern States in the Mississippi Flyway.

An individual from Louisiana believed that seasons should be lengthened by 5 to 10 days.

Individuals from Kansas and Washington believed that season lengths should be extended as opposed to additional birds in the daily bag limit.

An individual from Oregon believed that season lengths did not need to be any longer. Another individual from Oregon expressed support for lengthening the seasons.

Service Response: The Service concurs with the request for 60 days in the ''restrictive'' alternative for the Pacific Flyway. This season length would allow those States opting to split their seasons into 2 segments to open on a Saturday and close on a Sunday in each segment, as has been traditional in the Pacific Flyway. The Service notes that this option becomes increasingly important to States as season length decreases and would not be a primary consideration under more liberal seasons. Other proposals for modifications to season lengths in the proposed regulatory alternatives were not compelling.

E. Bag Limits

Council Recommendations: The Mississippi, Central, and Pacific Flyway Councils endorsed the AHM working group's recommendations, and subsequent Service proposals, for total duck bag limits. The Atlantic Flyway Council originally recommended a uniform total duck bag limit of 4 in all Atlantic Flyway regulatory alternatives

to minimize the frequency of changes. However, in lieu of the Service's June 6 proposal (i.e., 3 birds in the ''very restrictive'' and ''restrictive'' alternatives and 4 birds in the ''moderate'' and ''liberal'' alternatives), the Atlantic Flyway Council preferred the AHM working group's original recommendations for total duck bag limits at the June 25, 1997, public meeting.

All Flyway Councils supported the basic mallard daily bag limits as recommended by the working group, and eventually proposed by the Service, in each of the regulatory alternatives. However, the Atlantic and Pacific Flyway Councils recommended modifications to the hen mallard daily bag limit in the ''liberal'' alternative. The Atlantic Flyway Council recommended that there be no hen mallard restrictions and the Pacific Flyway Council recommended a daily bag limit of 3 hen mallards instead of 2.

Written Comments: The New Jersey Division of Fish, Game and Wildlife recommended that there be no hen mallard restrictions in the ''liberal'' alternative.

The South Carolina Department of Natural Resources (South Carolina) recommended the Service adopt the 6-bird daily bag limits recommended by the AHM working group and retain hen mallard restrictions outlined in the ''moderate'' and ''liberal'' regulations alternatives. South Carolina further believed that restricting the bag limit to 4 under the ''moderate'' and ''liberal'' alternatives unnecessarily restricts hunter opportunity.

The Georgia Department of Natural Resources (Georgia) supported the intent of the Atlantic Flyway Council's recommendation of a uniform 4-bird daily bag limit to simplify regulations, improve learning of harvest strategies, and maintain hunter numbers during years of low duck populations. However, in lieu of a uniform 4-bird limit, Georgia expressed support for the original AHM working group recommendations.

The New York State Department of Environmental Conservation (New York) affirmed their continued support for the Atlantic Flyway Council's recommendation of a uniform 4-bird daily bag limit in all alternatives. However, in the interim, in lieu of a uniform 4-bird limit, New York expressed support for the Service's June 6 **Federal Register** proposal. New York believed that a 6-bird daily bag limit would add to communication challenges to implementing AHM in the Atlantic Flyway.

The Florida Game and Fresh Water Fish Commission (Florida) strongly opposed the bag limits proposed by the Service for the Atlantic Flyway in the June 6 **Federal Register**. Florida was disappointed that the Service did not adopt the Atlantic Flyway Council's recommendation of a uniform 4-bird daily bag limit. Florida further believed that the Service's proposed regulatory alternatives penalizes the Atlantic Flyway in the two ''liberal'' alternatives without compensation in the two restrictive alternatives. In lieu of a uniform 4-bird limit, Florida preferred the original AHM working group recommendations for the 1997–98 hunting season.

The Delaware Division of Fish and Wildlife (Delaware) supported the season lengths and four regulatory alternatives for the 1997–98 season but expressed disappointment that the Service did not adopt the Atlantic Flyway Council's recommended 4-bird uniform daily bag limit. Delaware believed that providing a uniform 4-bird bag would increase hunter satisfaction and retain hunter interest in duck hunting and would provide a clearer picture of the effects of season length changes. In lieu of a uniform 4-bird limit, Delaware supported the original AHM working group recommendations for the 1997–98 hunting season. Delaware also reiterated their support for no mallard hen restrictions under the ''moderate'' and ''liberal'' alternatives.

The Massachusetts Division of Fisheries and Wildlife (Massachusetts) was disappointed with the Service's proposed bag limits in the Atlantic Flyway. Based on some of their research surveys, they recommended season length/bag limits of 20/2, 30/3, 45/4, and 60/5 for the four regulatory alternatives. Massachusetts also continued to support the removal of mallard hen restrictions in the daily bag limit and disagreed with the Service's reasoning for the proposed 2-hen bag limit. Massachusetts contends that increasing the daily bag limit for hens from 2 to 4 would increase the harvest by only 3.6 percent.

The Alabama Waterfowl Association recommended a 5-bird daily bag limit with no more than 4 mallards and 1 hen mallard.

The California Waterfowl Association supported the working group's recommendation of adding a second hen mallard to the daily bag limits under the ''moderate'' and ''liberal'' alternatives. They further recommended adding a third hen mallard under the Pacific Flyway's ''liberal'' alternative.

The Save Hens Alliance did not support an increase in the hen mallard daily bag limit, indicating that hen restrictions have had a positive effect on yearly breeding stocks. They further pointed out that a high percentage of hens surviving until the last few weeks of the season could be expected to return to breeding areas. As an alternative, they recommended that an extra drake mallard be added to the mallard daily bag limit.

The Great Outdoors, L.L.C., urged the Service to not tease the dedicated duck hunter with regulations that are not sustainable. They stated that the rebound in duck populations is due to a reversal in weather patterns, habitat improvements like the Conservation Reserve Program, and restrictions on season length and bag limits. They further pointed out that hunters are not requesting these liberalizations in seasons and believed that liberalizations in the shooting of hens was not ethical. They also believed that the increased use of zone/split seasons by States has increased the potential for higher harvests. Finally, they encouraged the Service to exercise common sense, restraint, and ethics, which are the foundations upon which sportsmanship is based.

Delta Waterfowl strongly opposed the proposed increase in the hen mallard bag limit under the ''moderate'' and ''liberal'' alternatives. They believed that increasing harvest on hen mallards was not warranted, that it would not be in the best interest of addressing the social aspect of waterfowl regulations, that the hunting public does not support this change.

The LaCrosse County Conservation Alliance of Wisconsin recommended that the hen mallard daily bag limit remain at 1 hen in the ''liberal'' alternative.

The Humane Society of the United States (HSUS) questioned the proposed bag limits for species other than mallards in the ''restrictive'' and ''very restrictive'' alternatives. HSUS believed that if mallards declined to the extent that these alternatives were adopted and the Service was correct in its assertion that mallards are good indicators of the population status of other species, then these bag limits should be set at zero until more data are available on these species.

Individual comments regarding overall bag limits and hen mallard restrictions varied widely. Several individuals from Louisiana preferred additional birds in the daily bag limit rather than additional days of season length. Other individuals from Alabama, Louisiana, California, Illinois, Indiana,

Kansas, Minnesota, Nebraska, New Mexico, Pennsylvania, Tennessee, Texas, Virginia, Wisconsin, and Wyoming saw no reason to increase bag limits beyond 5 birds per day. While most supported additional days in the ''moderate'' and ''liberal'' alternatives, most believed that current bag limits provided plenty of hunter opportunity. Other individuals from Arkansas, Minnesota, and Missouri were against any increase in the daily bag limit, while several commenters from Alabama, Connecticut, Massachusetts, Michigan, Missouri, Tennessee, and Wisconsin were in favor of a reduced 4-bird daily bag limit. One individual from Wisconsin supported a 3-bird daily bag limit, while individuals from Florida and Missouri supported a 6-bird daily bag limit.

Thirty individuals from Arkansas, Illinois, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Pennsylvania, Tennessee, Virginia, Wisconsin, and Wyoming were strongly opposed to any increase in the daily bag limit for hen mallards.

Individuals from California and Nevada expressed support for no internal bag-limit restrictions, while an individual from Oregon recommended holding bag limits at the ''restrictive'' alternative level. Another commenter suggested a nation-wide 3-bird daily bag limit.

Service Response: The Service concurs with the Atlantic Flyway Council and others who requested, in lieu of a constant 4-bird bag, a return to total bag limits in the Atlantic Flyway that were originally recommended by the AHM working group (i.e., 3 birds in the ''very restrictive'' and ''restrictive'' alternatives and 6 birds in the ''moderate'' and ''liberal'' alternatives).

Regarding mallard hen restrictions, the Service does not support the changes in hen restrictions recommended by the Atlantic and Pacific Flyway Councils. Although the role of sex-specific bag limits in regulating mallard harvests, total mortality, and recruitment is uncertain, sex-specific bag limits for mallards have been used since the early 1970's. Lower female (relative to male) bag limits (hen restrictions) have been used during 1972–96 in the Central Flyway, since 1976 in the Mississippi Flyway, and beginning in 1985 in the Atlantic and Pacific Flyways. These differential regulations were intended to direct harvest pressure away from females and thus increase annual survival of females relative to males in the population.

Recent analysis of the effects of mallard hen restrictions have shown these restrictions to have been effective in decreasing the harvest of females relative to males. The Service continues to support the use of regulations for mallards that emphasize protection of females while allowing optimum recreational opportunity on males. Therefore, the Service believes that it would be premature to remove hen restrictions completely without further investigation of the potential biological and social consequences of such changes. Further, the Service is concerned about the potential of synergistic effects of removing all hen restrictions on the harvest of similar appearing species like mottled ducks or black ducks.

Despite these concerns, the Service supports a moderate increase in the female mallard bag limit in the ''moderate'' and ''liberal'' alternatives. Even more liberal hen bag limits have been used frequently in the past when populations were relatively high and no detrimental resource impacts were apparent. Hunters are free to exercise self-imposed ethical constraints, but the Service finds no biological justification at this time for opposing these moderate increases in female mallard bag limits.

G. Special Seasons/Species Management

i. Canvasbacks

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service continue its use of the Office of Migratory Bird Management's January 1994 ''Draft—Canvasback Harvest Management: An Interim Strategy'' to guide the 1997–98 regulatory decisions on canvasback.

Written Comments: Individuals from California, Michigan, and North Carolina requested a 2-bird daily bag limit for canvasbacks.

ii. Pintails

Council Recommendations: The Atlantic Flyway Council originally did not endorse the ''Proposed Interim Strategy for Northern Pintail Harvest Regulations'' circulated for Councils' review in February of this year. However, the Council subsequently commented that the revised interim pintail harvest strategy appeared to be a reasonable stepping stone to adaptive harvest management of pintails and allowed for a greater growth rate than the original proposal. The Council reiterated its concern that the final AHM pintail model be a true continental model addressing all stocks of pintails.

The Upper-Region Regulations Committee of the Mississippi Flyway Council, and the Central Flyway Council did not endorse the Pacific Flyway Council's ''Proposed Interim Strategy for Northern Pintail Harvest Regulations'' as circulated for Councils' review in February of this year.

The Central Flyway Council recommended an interim, prescriptive method for determining pintail daily bag limits based on the breeding population size. The pintail limit would be 1 with a breeding population below 3.0 million; 2 with a breeding population between 3.0 and 4.5 million; 3 with a breeding population between 4.5 and 5.6 million; and equal to the overall daily bag limit with a breeding population above 5.6 million.

The Pacific Flyway Council recommended adoption of a revised ''Proposed Interim Harvest Strategy.'' The Council's revised interim strategy included several modifications intended to address the concerns expressed by the other Flyway Councils and by the Service technical review. The revised interim strategy was presented to the Service and the other three Flyway Councils at the April 22, 1997, AHM meeting in Arlington, VA, and presented in the June 6 **Federal Register**.

At the June 26 meeting of the Service Regulations Committee, all four Flyway Council representatives gave conditional endorsement to the Pacific Flyway's April 22, 1997, revised interim pintail strategy with the additional constraints proposed by the Service in the June 6 **Federal Register**.

The revised strategy is based on a mathematical model of the continental pintail population, which assumes that:

(1) the size of the continental population can be effectively monitored through spring surveys in the northcentral U.S., Central Canada, and Alaska,

(2) mortality due to hunting is additive to natural mortality,

(3) harvest in Canada and Alaska is relatively constant from one year to the next,

(4) crippling loss is constant and proportional to the size of the retrieved harvest,

(5) recruitment of young birds can be reasonably predicted based on the distribution of breeding pintails, and

(6) harvest of pintails can be reasonably predicted based on the length of the season and pintail bag limit in each Flyway.

The model predicts allowable harvest of pintails in the lower 48 States based on the current size of the pintail breeding population, anticipated recruitment, anticipated natural mortality, anticipated mortality due to hunting, and the desired size of the population in the following spring.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic

Flyway Council, commented that the interim pintail harvest strategy appeared to be reasonable but reiterated the Flyway's concerns that a true continental model be developed which addressed all stocks, including those wintering in the Atlantic Flyway.

Written Comments: The Arizona Game and Fish Department supported the pintail strategy proposed by the Pacific Flyway Council and the Service.

The Missouri Department of Conservation questioned the value of an interim pintail strategy for 2 to 3 years until the development of an adaptive approach; however, they supported the Service's compromise.

The New Jersey Division of Fish, Game and Wildlife (New Jersey) commented that the revised interim pintail harvest strategy appeared to be a reasonable stepping stone to adaptive harvest management of pintails and allowed for a greater growth rate than the original proposal. New Jersey was concerned that the final AHM pintail model should be a true continental model addressing all stocks of pintails.

The California Waterfowl Association urged adoption of a pintail interim AHM model for determining alternative daily bag limits for the 1997–98 hunting season.

The Nevada Waterfowl Association suggested increasing the daily bag limit on male pintails for the last third of the season to help reduce the high male to female ratio.

An individual from Louisiana recommended a daily bag limit of 2 pintails, only 1 of which could be a hen, under the ''liberal'' alternative.

An individual from Oregon was concerned about potential increases in pintail harvest given the population status of pintails and an individual in Louisiana believed that the pintail season should be closed since the population had not recovered despite good breeding conditions. Another individual from Michigan urged the Service to treat the pintail as it had the canvasback.

Service Response: The Service remains concerned about the overall status of the continental population of northern pintails. The pintail breeding population in May 1997, was estimated to be 3,558,000, a 30 percent increase from last year. The breeding population of northern pintails has doubled from the low of 1,803,400 in 1991, but remains 20 percent below the long-term average and 43 percent below the population objective established in the North American Waterfowl Management Plan.

The Service recognizes the value of developing a strategy for determining pintail hunting regulations that is technically sound and explicitly promotes growth of the pintail population. The Service believes that ultimately pintail hunting regulations should be guided by a formal AHM process. This year, a cooperative effort began to develop the needed technical foundation for a more formal incorporation of pintails into the AHM process. The Service recognizes and greatly appreciates the support for this effort provided by the Flyway Councils and participating non-governmental organizations. However, since it likely will require about three more years to complete the development and implementation of this new process, the Service believes there is merit in adopting an interim prescriptive strategy for the management of pintail harvest until the species can be fully addressed by the AHM process.

In the July 22, 1996, **Federal Register** (61 FR 37994), the Service indicated that the adoption of any interim strategy would be dependent on how the strategy addressed three key concerns: (1) explicit harvest-management objectives, (2) comprehensive model development for continental pintails, and (3) a consideration of the regulatory constraints imposed by the adaptive harvest strategy for mid-continent mallards. We believe that the strategy recommended by the Pacific Flyway Council more satisfactorily addresses these elements than does the strategy recommended by the Central Flyway. Therefore, the Service proposed in the June 6 **Federal Register** to adopt the revised interim harvest strategy proposed by the Pacific Flyway Council, with the following modifications: (1) the maximum pintail daily bag limit under any regulatory alternative in any Flyway would be limited to 3 pintails, and (2) that this interim strategy will be replaced by a more fully adaptive approach at the earliest opportunity. Further, we believe the interim pintail harvest strategy should be thoroughly reviewed in about 3 years, regardless of whether a more adaptive approach is available at that time. The Service will employ the interim pintail prescription proposed by the Pacific Flyway and the additional constraints listed above to determine appropriate pintail bag limits in all Flyways beginning in the 1997–98 hunting season.

The technical details of the Strategy are available by writing directly to MBMO at the address indicated under the caption **ADDRESSES.**

iii. September Teal Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the continuance of the experimental September teal/wood duck seasons in Kentucky and Tennessee for the 1997–98 season with no change from the 1996–97 season frameworks.

The Central Flyway Council recommended a 3-year experimental teal harvest strategy in the Central Flyway based on the breeding population of blue-winged teal. When the 3-year running average breeding population of blue-winged teal is 4.7 million or greater, the Council's recommended harvest strategy would consist of two changes to the current September teal season frameworks. First, in those Central Flyway States currently allowed a September teal season, an additional 7 days of hunting (for a total of 16 days) and 1 additional teal (for a total of 5 teal) would be allowed. Second, for Central Flyway production States, the recommended harvest strategy would provide for a season of up to 7 days, beginning no earlier than September 20, and a daily bag limit of 4 ducks, 3 of which must be teal. The Council further recommended that the Service work with the States to cooperatively develop an experimental design and criteria to adequately evaluate the proposed expansion of teal harvest.

Written Comments: The Kansas Department of Wildlife and Parks (Kansas), Nebraska Game and Parks Commission (Nebraska), North Dakota Game and Fish Department (North Dakota), Oklahoma Department of Wildlife Conservation (Oklahoma), South Dakota Department of Game, Fish and Parks (South Dakota), and Texas Parks and Wildlife Department (Texas) supported the Central Flyway proposal for September teal seasons. Kansas and Texas commented that additional harvest provided by the proposed season expansion will not be excessive or negatively impact future teal populations. Kansas and Texas indicated that ongoing work associated with implementation of the Adaptive Harvest Management Program should not preclude completion of this management initiative. Kansas said they are willing to satisfy requirements associated with evaluation and monitoring associated with implementation of this proposed strategy. Kansas, Oklahoma and Texas indicated that this strategy will encourage the development and maintenance of wetland habitat and promote hunting by youth hunters. Nebraska pointed out that their duck breeding population was 17 percent above the most recent five-year average and would appreciate the additional

opportunity that would be provided by the Central Flyway proposal. North Dakota, South Dakota, and Wyoming indicated that approval of the Central Flyway proposal would provide additional opportunity for northern States at a time when teal populations are at an all-time high. North Dakota commented that implementation of this proposal is currently appropriate because the Central Flyway preseason duck banding program will provide information for evaluations. North Dakota pointed out that their blue-winged teal population estimate for this year is 115 percent above the long-term average.

Several individuals recommended higher daily bag limits for teal given the current population level. Two individuals from Texas recommended a 5-teal daily bag limit while an individual from Missouri recommended a 6-teal limit. Another individual from Texas questioned why the Service was reluctant to increase the teal season length and bag limit.

Service Response: It is important that any proposal for expanding the current teal season include a comprehensive evaluation plan and be coordinated within and among the Flyways. Identifying the full scope of any expansion is important, because it will dictate how extensive the evaluation plan must be.

The Central Flyway proposal does not include an evaluation plan. As previously stated, the evaluation plan must include study objectives, experimental design, decision criteria, and identification of data needs. The evaluation plan should address not only potential impacts to teal populations, but also impacts to nontarget species and the ability of hunters to comply with special-season regulations. Further, the September teal season bag limit should be limited to teal and not expanded to include other species, as was contained in the Central Flyway's proposal.

In an effort to further define what would comprise an acceptable evaluation plan, the Service suggests that any plan should consider the following: (1) description of the population dynamics of teal (e.g., how the populations respond to changes in the environment, harvest pressure, etc.), (2) current and predicted harvest pressure on teal, (3) the levels of regulations to be considered, (4) the harvest allocation among and within (i.e., production vs. nonproduction states) Flyways, (5) the acceptable attempt rate at nontarget species (i.e., the rate at which hunters attempt to shoot ducks other than teal), and (6) staff and financial resources to conduct the evaluation.

iv. September Duck Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Iowa be allowed to open the second segment of their split duck season no earlier than October 10, instead of October 15.

Service Response: Although this is primarily a late-season issue, the Service understands Iowa's concern for reaching a decision on the issue at this time. The Service concurs with this minor change in Iowa's framework.

vi. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended the continuance of the youth waterfowl hunt day and requested the Service announce their intent in June. The Council further recommended that ducks, coots, mergansers, moorhens, brant and snow geese be open to harvest on the special day and requested clarification of whether youth may participate in other open migratory bird hunting seasons on that day.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that youth waterfowl hunt day bag limits be the same as the regular-season bag limits and include ducks, geese, and coots, with framework dates 14 days outside the regular duck-season framework dates instead of 10.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the inclusion of geese and coots in a 2-day youth waterfowl hunting season, with framework dates 14 days outside of the regular duck-season framework dates instead of 10.

The Pacific Flyway Council recommended continuation of the youth hunt that allows States to select outside the general season and frameworks.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, encouraged the Service to make an early announcement regarding the Youth Waterfowl Hunt Day and asked to include Atlantic brant, snow geese, and moorhens along with ducks as legal game.

Written Comments: The New Jersey Division of Fish, Game and Wildlife encouraged the Service to make an early announcement of their intention to hold another youth hunting day. They also recommended that ducks, moorhens, brant and snow geese be open to harvest on the special day.

An individual from Wisconsin supported the establishment of a special youth hunt for the 1997–98 hunting season. Another commenter from Nebraska thanked the Service for the establishment of the youth hunt last year.

Service Response: The Service appreciates the recommendations from the Flyway Councils regarding the continuation of a youth waterfowl hunting day for this hunting season. While the Service recognizes that there will be those organizations and individuals opposed to the establishment of this day on the basis of general opposition to hunting as a desirable outdoor recreational activity, the Service reiterates its belief that recreational sport hunting is a proper and compatible use of a renewable natural resource. The Service is further directed by various legislation to regulate the hunting of migratory waterfowl and views its role as one of permitting recreational harvest opportunities consistent with long-term resource conservation for all Americans. As part of this objective, the Service believes a well-educated and properly trained hunting constituency is in the best interest of the resource and views a youth hunting day as an educational opportunity to help ensure safe, high-quality hunting for future generations of Americans. The Service believes that this proposal is consistent with its responsibility to provide general education and training in the wise recreational uses of our nation's valuable wildlife resources and provides the best and safest learning environment for our youth who are interested in hunting.

Regarding the Councils' recommendation on the framework dates, the Service agrees that the period 14 days prior to and after the outside framework dates for the regular duck season provides sufficient flexibility for States to provide this opportunity to their constituents.

The Service recognizes the potential opportunity that inclusion of geese in the youth waterfowl hunt might provide. However, due to season closures and restrictions in place to protect certain populations of Canada geese in various parts of the country, the Service believes this complication is not appropriate at this point but is certainly a matter for consideration in future regulatory cycles. Further, this proposal does not preclude the inclusion of geese from the daily bag if the goose season is open at the time of the special youth hunt.

Therefore, the Service believes this opportunity should be offered during the 1997–98 hunting season and proposes the following guidelines:

(1) States may select 1 day per duck-hunting zone, designated as ''Youth Waterfowl Hunting Day'', in addition to their regular duck seasons.

(2) The day must be held outside any regular duck season on either a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate.

(3) The day could be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season.

(4) The daily bag limit may include ducks, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species restrictions would remain in effect.

(5) Youth hunters must be 15 years of age or younger.

(6) An adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended a 3-year experimental September Canada goose season in New Jersey with a framework closing date of the first Saturday in October. The Council also recommended an experimental framework closing date of October 5 for the Long Island, New York, 1997 September Canada Goose Season.

The Pacific Flyway Council recommended several modifications to the existing special September goose seasons. The Council recommended expansion of the Washington September Canada goose hunt zone to include all of Washington for 7 consecutive days. In California, the Council recommended the establishment of a new 9-day season, with a 2-bird daily bag and possession limit, in Humboldt County, California. Harvest of up to 200 birds would be controlled through a regulated permit system. In Oregon, the Council recommended that the framework in Clatsop, Columbia, Multnomah, Washington, Clackamas, Marion, Yamhill, Polk, Linn, Benton, Lane, Lincoln, and Tullamook Counties be 14 consecutive days between September 1 and 20 with a daily bag and possession limit of 5 and 10 birds, respectively.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, reiterated support for New Jersey's request for extension of the special September Canada goose season to the first Saturday in October and New York's request to extend to October 5 and cited that all criteria have been met. These additional days would increase the harvests of resident geese and help to reduce nuisance complaints.

Written Comments: The Maryland Department of Natural Resources opposed the extension of the framework closing date in New Jersey's September Canada goose season to the first Saturday in October. They believed that there will be an insufficient number of migrant neckbanded geese in the migrant population to evaluate the impacts of this proposed change. They further believed that due to potential differences in vulnerability to harvest between resident and migrant geese, the addition of hunting days in early October could lead to even higher than expected migrant goose harvest.

The New Jersey Division of Fish, Game and Wildlife supported the modification of the framework closing date in New Jersey to the first Saturday in October. They estimated that the additional days would allow hunters to harvest an additional average of 1,600 resident Canada geese which would help slow population growth and reduce the number and severity of nuisance goose complaints. In response to Maryland's comments, they pointed out several other techniques for assessing migrant harvest during special seasons, such as the continuing telemetry studies and the initiation of Atlantic Population (AP) preseason breeding ground banding in 1997. New Jersey contends that use of these data sets will greatly enhance the understanding of arrival dates of AP geese and will replace the dependence on the disappearing migrant neck bands. New Jersey further pointed out that their proposal meets the criteria established by the Atlantic Flyway Council and the Service for special Canada goose seasons targeting resident Canada geese.

Service Response: At the request of the Atlantic Flyway Council, the Service temporarily extended framework closing dates in the Atlantic Flyway on resident geese in 1996 to September 25, without evaluation in most areas, and on an experimental basis to September 30 in New Jersey and North Carolina. Presently, New Jersey has completed only one year of its agreed upon 3-year evaluation.

Although extending the framework closing dates into early October in New Jersey and New York would increase harvests of resident geese and help to alleviate nuisance problems, the Service believes that further evaluation is needed before all parties are comfortable that the harvest of migrant geese will not exceed 10 percent of the harvest. Also, the Service is concerned that sample sizes of neck-banded migrant geese are no longer sufficient to estimate the percentage of migrant geese in the early seasons with any degree of reliability. Both New Jersey's and New York's proposals indicate that the harvests of migrant geese increases rather dramatically after October 1 and there is little capability to measure precisely the percentage of migrant harvest. Thus, the Service does not support New Jersey's request until it completes its 3-year evaluation. However, based on the observations presented, the Service would support New York extending its season on Long Island from September 25 until September 30 on a 3-year experimental basis.

With respect to the Pacific Flyway Councils' recommendations, the Service supports the change to a 7-day Statewide season in Washington and the new season proposal for California, as both of these recommendations conform to the existing Service criteria for special Canada goose seasons. The Service also endorses the proposal for a 14 day experimental season in Oregon between September 1 and 20. The Service notes that a 3 year evaluation of that portion of the season occurring after September 15 is required. The Service is particularly concerned about possible impacts on Dusky Canada geese. The Service specifically requires monitoring be conducted for the presence of neck banded dusky Canada geese throughout the hunt area during this period as a part of the experimental evaluation. Additionally, the Service requires Oregon to submit an annual report of their evaluation by July 15 each year describing the results of this monitoring program. These results will be reviewed prior to continuation of the experiment during the 3-year experimental period and modifications of the area open to hunting during this period will be required if Dusky Canada geese are found to be present during the season.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended Michigan and Wisconsin be allowed to open their regular Canada goose season as early as September 7, 1997, in Michigan's Upper Peninsula and September 20, 1997, in Wisconsin.

Service Response: The Service concurs.

9. Sandhill Cranes

Council Recommendations: The Central Flyway and Pacific Flyway Councils recommended that in Montana, sandhill cranes in Wheatland County and that portion of Sweet Grass County north of I-90 be delineated as Rocky Mountain Population sandhill cranes. Thus, management of these

cranes, including harvest, would be guided by the Rocky Mountain Population Sandhill Crane Management Plan, rather than the Mid-Continent Population Sandhill Crane Management Plan.

Service Response: The Service agrees with this minor change.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended framework dates of October 6 to January 31, a 30-day season and 3-bird daily bag limit. The Council urged the Service to make assessment of the relative effects of harvest and habitat on woodcock populations a high priority.

The Mississippi Flyway Council recommended adoption of an interim woodcock harvest strategy for the Central region until such time as Regional Woodcock Management Plans and a long-term harvest strategy are completed. The interim harvest strategy would consist of the following:

The following harvest restrictions would be implemented when the cumulative change since 1968 in the number of woodcock heard in the Singing-ground Survey exceeds 51 percent for the Central Management Region:

(1) Season framework dates would be the Saturday nearest September 22 through January.

(2) The daily bag limit would be reduced from 5 to 3 birds.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, expressed reluctant support for the recommendation for more restrictive framework dates and season lengths for woodcock. However, he indicated that given the proposed September 20 opening framework in the Mississippi and Central Flyway States, perhaps October 1, rather than October 6, would be a more appropriate opening date for the Atlantic Flyway. He encouraged the Service to assess the relative roles of harvest and habitat changes in woodcock population declines.

Mr. Charles D. Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, acknowledged the problem with declining woodcock populations and encouraged the Service to work with the States to address the problem of diminishing woodcock habitat.

Mr. William H. Goudy, representing the Ruffed Grouse Society, expressed concern about the lost recreational opportunity that will result from reduced season lengths and bag limits, particularly in the Mississippi Flyway. Although the change in bag limits would be acceptable, he regretted the loss in days. He indicated that the population data on which the Service bases its decisions is flawed and subject to criticism and that there is no information on what effects the changes in regulations will have. He expressed support for the expanded use of zones for woodcock hunting.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, stressed that the decline in woodcock numbers was of great concern and supported the proposed harvest restrictions, but questioned the ability to assess the role of harvest in woodcock population dynamics.

Written Comments: The New Jersey Division of Fish, Game, and Wildlife supported the Atlantic Flyway Council's recommended framework dates of October 6 to January 31, a 30-day season and 3-bird daily bag limit. Although they believed that the population declines were the result of habitat changes and harvest played little or no role in the declines, they realized that the data bases regarding woodcock populations are not adequate to assess the role of harvest in woodcock population dynamics. They further urged the Service to make assessment of the relative effects of harvest and habitat on woodcock populations a high priority.

The Louisiana Wildlife Federation (LWF) urged the Service to reconsider and allow for a 65-day season and a 5-bird daily bag limit in the Central Region. The LWF was concerned that the proposed reductions would reduce participation and needed support for woodcock conservation.

Two individuals from Michigan and one from Ohio supported more restrictive woodcock hunting regulations with two indicating that restrictions were overdue. They also noted the importance of habitat management.

Three individuals from Wisconsin and one from Michigan supported reducing the bag limit from 5 to 3 birds but expressed concerns about other possible regulatory changes. Three of these individuals indicated a shorter season would be acceptable but felt that the framework opening date should remain September 15, noting that hunting opportunity in northern areas would be affected disproportionately by a later framework opening date.

An individual from Wisconsin felt that changes in regulations should only be made when it is certain that they will help the population. He also indicated the season should begin before October 1 and that it should not be shorter than 45 days.

An individual from Michigan indicated that based on his personal observations, woodcock populations have not declined. He felt that an opening date later than September 15 would take away the best time to hunt and suggested different opening and closing dates based on latitude. Another individual from Michigan implied that regulations should not be changed unless hunting mortality is causing the population declines. She also listed a number of questions related to woodcock population ecology she believes the Service should answer, presumably before changing regulations.

An individual from Kentucky thought that reducing the woodcock harvest would help a little but would not solve the problem. He noted the importance of habitat management.

Seventeen individuals from Louisiana, one individual from Pennsylvania, and one from Vermont opposed changes in regulations, generally citing habitat changes and/or weather as the causes of the woodcock population decline. Many of these individuals were concerned that more restrictive regulations would reduce the number of woodcock hunters and thus, support for woodcock conservation. Four of these individuals indicated that the Service should improve its ability to monitor woodcock populations before restricting hunting regulations.

An individual from Louisiana was not opposed to restrictions provided that accurate data indicate that hunting pressure is the major cause of the population declines.

Three individuals from Texas opposed more restrictive hunting regulations based on the presumption that the Singing-ground Survey is statistically flawed and potentially biased.

Service Response: Woodcock populations have declined significantly since the 1960s, and in recent years reproductive success has been poor. The Service is very concerned about the ongoing declines in woodcock populations. Although hunting mortality is not believed to be the major force driving the declines, the Service believes some restrictions to woodcock harvest management are appropriate given the current status and trends of woodcock populations and the limited information on the role of hunting mortality and other factors in woodcock population dynamics. While habitat changes appear to be the primary cause of the woodcock population declines, other factors, including hunting

mortality, may be contributing to the declines, and the importance of these factors may increase as populations, reproductive success, and the habitat base decline. Thus, the Service believes that hunting regulations should be commensurate with woodcock population status and rates of decline. A combination of changes in framework dates, bag limits, and season length are necessary in order to achieve a significant reduction in harvest that is shared throughout the range of the woodcock.

Therefore, in response to continuing long-term declines in the woodcock population, the Service is proposing several framework changes. In the Eastern Region, the Service concurs with the recommendation from the Atlantic Flyway Council and proposes framework dates of October 6 through January 31, season length of 30 days, and a daily bag limit of 3 birds. New Jersey may continue to select 2 zones with a reduced season length of 24 days in each zone. In the Central Region, the Service proposes framework dates of the Saturday nearest September 22 (September 20 this year) through January 31, a reduced season length of 45 days (from 65 days), and a bag limit reduction from 5 to 3 birds.

The Service's proposal is intended to reduce harvest, but not reduce the number of patricipatory hunters. The proposed restrictions represent a compromise to achieve a reduction in harvest while still allowing reasonable recreational opportunity.

The Service also acknowledges that existing woodcock surveys are somewhat limited compared to surveys for some other migratory bird species, and believes this is one of the reasons a cautious approach to harvest management is appropriate. Although the Service always seeks to improve its monitoring programs whenever practical, woodcock populations are inherently difficult to monitor because of the bird's inconspicuous nature and preference for areas with dense vegetation. Although some aspects of the Singing-ground Survey may warrant scrutiny and/or improvement, the current survey provides the only index to changes in abundance of breeding populations of woodcock and the results are used with confidence to guide the decision-making process. Improved information on total woodcock harvest and hunter success will be available when the Harvest Information Program, currently being implemented by the Service and State wildlife agencies, is fully implemented. Unfortunately, this information is not likely to clarify the relationship between hunting mortality and population status.

The Service notes that a 30-day season with an October 1 framework opening date would result in little or no reduction in harvest in the northern states in the Atlantic Flyway, where much of the harvest in the Flyway occurs. Thus, the Service concurs with the original October 6 recommendation by the Atlantic Flyway Council, which was not predicated on the establishment of specific regulations in the Mississippi and Central flyways.

The Service believes zoning has the potential to increase the harvest of woodcock, and therefore does not support the expanded use of zoning at a time when more restrictive woodcock hunting regulations are being established to bring harvest opportunities to a level more commensurate with current woodcock population status.

The Service seeks active participation by the Flyway Councils to address the major factors behind long-term population declines, and to develop a long-term harvest strategy for woodcock.

17. White-winged and White-tipped Doves

Council Recommendations: The Central Flyway Council recommended removing the restriction of no more than 6 white-winged doves in the aggregate daily bag limit during the regular mourning dove season in Texas.

Service Response: The Service supports removing the restriction on the number of white-winged doves allowed within the aggregate daily bag limit during the regular dove season in Texas. White-winged doves have been expanding their distribution and density northward in Texas. Populations have doubled since 1989 with an estimated 702,000 whitewings nesting in a 17-county area north of the Lower Rio Grande Valley (LRGV) which, historically, was the only area occupied by the birds. No increase in harvest is expected for whitewings in the LRGV. In the remainder of the State, a harvest increase of 15 percent is projected.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended an experimental tundra swan season in the Kotzebue Sound region of Alaska's Game Management Unit (GMU 23), which would be consistent with the Pacific Flyway Management Plan's harvest and permit guidelines for the Western Population of [Tundra] swans, and current guidelines for conducting experimental seasons (3-year evaluation). The recommended season framework would be September 1 - October 31 with a 3-swan per season limit (by sequential permit) and a maximum of 300 permits in the GMU.

The Pacific Flyway Council recommended an increase in Alaska's dark goose daily bag and possession limits from 4 and 8 to 6 and 12, respectively in GMU 9(D) and the Unimak Island portion of Unit 10.

The Pacific Flyway Council recommended an increase in Alaska's falconry bag limits to 6 daily and 12 in possession for migratory birds in the aggregate. Restrictive species limits would not be applied.

Service Response: The Service concurs with the proposal to offer an experimental Tundra swan season in GMU 23 consistent with the management plan and hunt guidelines in the Flyway Management plan. The Service also supports the change in the dark goose bag and possession limits in Units 9(D) and the Unimak Island portion of Unit 10. The Service finds no compelling rational for the request to alter the falconry bag and possession limits in Alaska and will maintain the existing national falconry bag and possession limits in all States.

23. Other

A. Compensatory Days

Council Recommendations: The Atlantic Flyway Council requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. The Council's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia. The Council believes that allowing granting this request at this time will allow integration of these changes into AHM evaluations of harvest rates in the Flyway and selection of appropriate regulatory alternatives.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, offered to modify the Flyway's original request for compensatory days to states closed to Sunday hunting by restricting it to only those states with existing statewide prohibitions in place prior to its implementation. This action prevents any states from enacting new laws to close Sunday hunting in order to be eligible for compensatory days.

Written Comments: The South Carolina Department of Natural

Resources asserted that Sunday closures of waterfowl hunting are State issues and should not be addressed by the Service. South Carolina further asserted that if the Service grants compensatory days to States that are currently closed on Sundays by State law, then compensatory days should also be granted to States that enact Sunday closures in the future.

The Delaware Division of Fish and Wildlife recommended that the Service grant compensatory days in lieu of Sunday hunting on a 1 for 1 basis to restricted States with no penalty to unrestricted States.

The Maryland Department of Natural Resources (Maryland) requested that the Service grant compensatory days to the 10 Atlantic Flyway States that are closed to waterfowl hunting on Sunday by State law. They believe that compensatory days would enable these States to equally share in the recreational benefits derived from the Atlantic Flyway's waterfowl resource. Maryland supported the Federal closure of Sunday in Maryland for the taking of wild waterfowl if the Service deemed this approach necessary to provide compensatory days. However, Maryland further requested the Service give consideration to the current Sunday hunting exception Maryland grants falconers.

The New Jersey Division of Fish, Game and Wildlife (New Jersey) requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. New Jersey's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia.

Service Response: In 1995, the Service committed to working with the Atlantic Flyway Council to review and better clarify the issue of compensatory days for those States prohibiting Sunday hunting in an attempt to resolve this long-standing issue. In the past, the Service has maintained the policy that this problem is an individual State issue, to be resolved by each State removing their self-imposed restrictions. However, recognizing the difficulties involved with changing State law, the Service is sympathetic to the loss of hunting opportunity that results from the existing prohibitions on Sunday hunting. A recent Service assessment suggests that compensatory days for Sunday closures will result in a slight percent increase in the harvest rates of mallards breeding in eastern Canada and the northeastern U.S., which would be accompanied by a small percent decrease in average breeding population size. A similar effect is expected on other species, although a formal assessment for all duck species is not yet available. Thus, after examining the various technical and policy concerns, the Service believes that any additional harvest impacts can be adjusted by changing regulatory frameworks where needed and that various administrative and procedural concurs can be managed. Therefore, during the 1997–98 hunting season, the Service proposes to offer compensatory days to States in accordance to the following guidelines:

(1) Only States in the Atlantic Flyway that prohibit Sunday hunting *Statewide* by State law prior to 1997 are eligible (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia).

(2) All Sundays will be closed to all take (including extended falconry) of migratory waterfowl (including mergansers and coots) by Federal rulemaking. Other migratory game species are not eligible for compensatory days.

(3) Season days must run consecutively within prescribed framework dates and season length, excluding the Sunday closure, and conform to existing split-season criteria. Total season days (including extended falconry) must not exceed 107 days.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and wants to obtain the comments and suggestions from all interested areas of the public, as well as other governmental agencies. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. However, special circumstances involved in the establishment of these regulations limit the amount of time the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes allowing comment periods past the dates specified is contrary to public interest.

Comment Procedure

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process, whenever practical. Accordingly, interested persons may participate by submitting written comments to the Chief, MBMO, at the address listed under the caption **ADDRESSES**. The public may inspect comments during normal business hours at the Service's office address listed under the caption **ADDRESSES**. The Service will consider all relevant comments received and will try to acknowledge received comments, but may not provide an individual response to each commenter.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service will design hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations will be included in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final frameworks will reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents and will be available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the March 13, 1997, **Federal Register**, the Service reported measures

it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. This proposed rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Service examined these proposed regulations under the Paperwork Reduction Act of 1995. The various information collection requirements are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance numbers 1018–0015 and 1018–0023.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1997–98 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: July 16, 1997.

Joseph E. Doddridge,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1997–98 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 1997, and March 10, 1998.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: One-half hour before sunrise to sunset, except in Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 20). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and must be included in the regular duck season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York; the Lake Champlain Region of New York and Vermont; the Counties of Caroline, Cecil, Dorchester, and Talbot in Maryland; Delaware; and Crawford County in Pennsylvania. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except

Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 30 days during September 1–30 may be selected by New Jersey, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected in Crawford County, Pennsylvania. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1-15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in the Michigan Counties of Huron, Saginaw and Tuscola, where no special season may be held. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 2, with season and possession limits of 4 will apply to the special season.

Oregon may select an experimental special Canada goose season of up to 15 days during the period September 1–20. Daily bag limits may not exceed 5 Canada geese. At a minimum, Oregon must provide an annual evaluation of the number of Dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of Dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 3 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit and the total number of permits issued may not exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4. All participants must have a valid State permit and the total number of permits is not to exceed 200 for the season in Nez Perce County.

California may select a 9-day season in Humboldt County during the period September 1–15.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 20 in Wisconsin and September 27 in the Upper Peninsula of Michigan. Season lengths and bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. Seasons in the Park-Big Horn Unit in Wyoming and Idaho are experimental.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 18) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails - In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails - In the Atlantic, Mississippi, and Central

Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 6 and January 31. States in the Central and Mississippi Flyways may select hunting seasons between the Saturday nearest September 22 (September 20) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Atlantic Flyway and 45 days in the Central and Mississippi Flyways. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington - Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California - Not more than 60 days which may be split between two periods, September 1-15 and November 1-January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks - Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Light Geese - A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese - A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 9(e) and 18, the limits for Canada geese are 1 daily and 2 in possession.
2. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. Middleton Island is closed to the taking of Canada geese.
3. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.
4. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for Canada geese are 6 daily and 12 in possession.

Brant - A daily bag limit of 2.

Common snipe - A daily bag limit of 8.

Sandhill cranes - A daily bag limit of 3.

Tundra Swans - Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.
2. All season Framework dates are September 1 - October 31.
3. In GMU 18, no more than 500 permits may be issued during the operational season. No more than 3 tundra swans permits may be issued per hunter and permits must be issued sequentially one at a time, upon filing a harvest report.
4. In GMU 22, no more than 300 permits may be issued during the operational season authorizing each permittee to take 1 tundra swan per season.
5. In GMU 23, no more than 300 permits may be issued during the experimental season. No more than 3 tundra swans permits may be issued per hunter and permits must be issued sequentially, one at a time, upon filing a harvest report. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks - Not to exceed 5.

Common moorhens - Not to exceed 6.

Common snipe - Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 5.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide and excluding the Great Divide Portion.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone - Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone - Remainder of the State.

California

White-winged Dove Open Areas - Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone - The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone - Remainder of State.

Georgia

Northern Zone - That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of the Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence west along the southern border of Candler County to the Ohoopee River; thence north along the western border of Candler County to Bulloch County; thence north along the western border of Bulloch County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone - Remainder of the State.

Louisiana

North Zone - That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone - The remainder of the State.

Mississippi

South Zone - The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone - The remainder of the State.

Nevada

White-winged Dove Open Areas - Clark and Nye Counties.

Texas

North Zone - That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I-10 at Fort Hancock; east along I-10 to I-20; northeast along I-20 to I-30 at Fort Worth; northeast along I-30 to the Texas-Arkansas State line.

South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I-10 to Orange, Texas.

Special White-winged Dove Area in the South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions - Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone - That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone - Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone - The remainder of the State.

New Mexico

North Zone - North of a line following U.S. 60 from the Arizona State line east to I-25 at Socorro and then south along I-25 from Socorro to the Texas State line.

South Zone - Remainder of the State.

Washington

Western Washington - The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone - That portion of the State north of NJ 70.

South Zone - The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

Connecticut

North Zone - That portion of the State north of I-95.

Maryland

Eastern Unit - Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince Georges Counties east of I-95.

Western Unit - Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince Georges Counties east of I-95.

Massachusetts

Western Zone - That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA

10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone - That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone - That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Early-season Hunt Unit - Cheshire, Hillsborough, Rockingham, and Strafford Counties.

New York

Lake Champlain Zone - The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone - That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone - That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone - Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone - That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone - The remaining portion of New York.

North Carolina

Northeast Hunt Unit - Counties of Bertie, Camden, Chovan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit - Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S-8-31 and west of the Santee Dam.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone - Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Minnesota

Twin Cities Metropolitan Canada Goose Zone -

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities or Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the state.

Northwest Goose Zone (included for reference only, not a special September Goose Season Zone) - That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Four Goose Zone - That portion of the state encompassed by a line extending north from the Iowa border along U.S. Interstate Highway 35 to the south boundary of the Twin Cities Metropolitan Canada Goose Zone, then west and north along the boundary of

the Twin Cities Metropolitan Canada Goose Zone to U.S. Interstate 94, then west and north on U.S. Interstate 94 to the North Dakota border.

Two Goose Zone - That portion of the state to the north of a line extending east from the North Dakota border along U.S. Interstate 94 to the boundary of the Twin Cities Metropolitan Canada Goose Zone, then north and east along the Twin Cities Metropolitan Canada Goose Zone boundary to the Wisconsin border, except the Northwest Goose Zone and that portion of the State encompassed by a line extending north from the Iowa border along U.S. Interstate 35 to the south boundary of the Twin Cities Metropolitan Canada Goose Zone, then east on the Twin Cites Metropolitan Canada Goose Zone boundary to the Wisconsin border.

Tennessee

Middle Tennessee Zone - Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

Cumberland Plateau Zone - Bledsoe, Bradley, Clay, Cumberland, Dekalb, Fentress, Grundy, Hamilton, Jackson, Marion, McMinn, Meigs, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Van Buren, Warren, and White Counties.

East Tennessee Zone - Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Monroe, Sevier, Sullivan, Unicoi, Union, and Washington Counties.

Wisconsin

Early-Season Subzone A - That portion of the State encompassed by a line beginning at the Lake Michigan shore in Sheboygan, then west along State Highway 23 to State 67, southerly along State 67 to County Highway E in Sheboygan County, southerly along County E to State 28, south and west along State 28 to U.S. Highway 41, southerly along U.S. 41 to State 33, westerly along State 33 to County Highway U in Washington County, southerly along County U to County N, southeasterly along County N to State 60, westerly along State 60 to County Highway P in Dodge County, southerly along County P to County O, westerly along County O to State 109, south and west along State 109 to State 26, southerly along State 26 to U.S. 12, southerly along U.S. 12 to State 89, southerly along State 89 to U.S. 14, southerly along U.S. 14 to the Illinois border, east along the Illinois border to the Michigan border in Lake Michigan, north along the Michigan border in Lake Michigan to a point directly east of State 23 in Sheboygan, then west along that line to the point of beginning on the Lake Michigan shore in Sheboygan.

Early-Season Subzone B - That portion of the State between Early-Season Subzone A and a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Central Flyway

South Dakota

Unit A - Deuel, Hamlin, Codington, and Day Counties.

Unit B - Brookings, Clark, Kingsbury, and Lake Counties and those portions of Moody County west of I-29 and Miner County east of SD Highway 25.

Pacific Flyway

Idaho

East Zone - Bonneville, Caribou, Fremont and Teton Counties.

Oregon

Northwest Zone - Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone - Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone - Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union and Wasco Counties.

Washington

Southwest Zone - Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone - Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Farson-Edon Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area - Those portions of Teton County described in State regulations.

Ducks

Mississippi Flyway

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area - The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area - That portion of the State west of a line beginning at the Oklahoma border, north on I-35 to Wichita, north on I-135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area - Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area - The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone - Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area - That portion of the State west of I-35.

Texas

Regular-Season Open Area - That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I-35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area - The Central Flyway portion of the State except that area south of I-90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area - Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit - Portions of Fremont County.

Park and Bighorn County Unit - Portions of Park and Bighorn Counties.

Pacific Flyway

Arizona

Special-Season Area - Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area - See State regulations.

Utah

Special-Season Area - Rich County.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Eden-Farson Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone - State Game Management Units 11-13 and 17-26.

Gulf Coast Zone - State Game Management Units 5-7, 9, 14-16, and 10 - Unimak Island only.

Southeast Zone - State Game Management Units 1-4.

Pribilof and Aleutian Islands Zone - State Game Management Unit 10 - except Unimak Island.

Kodiak Zone - State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area - The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area - All of the municipality of Culebra.

Desecheo Island Closure Area - All of Desecheo Island.

Mona Island Closure Area - All of Mona Island.

El Verde Closure Area - Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas - All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

BILLING CODE 4310–55–F

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1997-98 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY				CENTRAL FLYWAY (a)				PACIFIC FLYWAY (b)(c)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Begining Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag/ Possession	3 6	3 6	6 8	6 8	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	4 8	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY															
Black Duck	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
H. Merganser	1	1	1	1	1	1	1	1	1	1	1	1	-	-	-	-
Canvasback	0 OR1, ACCORDING TO THE SERVICE'S INTERIM CANVASBACK HARVEST MANAGEMENT STRATEGY															
Redhead	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various options as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all options, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Mangement Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all options except the liberal option, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive options, and 8-10 under the moderate and liberal options. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all options, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

[FR Doc. 97–19397 Filed 7–22–97; 8:45 am]

BILLING CODE 4310–55–C

federal register

Wednesday
July 23, 1997

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1005, 1007, and 1046

Milk in the Carolina and Certain Other Marketing Areas; Order Amending the Orders; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends three Federal milk orders in the Southeastern United States. The amendments modify certain provisions of the orders regarding transportation credits which were implemented on an interim basis in order to reimburse handlers for the cost of importing bulk milk into these markets for fluid use when local supplies are insufficient to meet fluid needs. More than two-thirds of the producers in the Carolina, Southeast, and Louisville-Lexington-Evansville markets approved the adoption of the rules. Producers in the Tennessee Valley market disapproved the Tennessee Valley milk order as amended, resulting in the proposed termination of such milk order to be handled in a separate rulemaking action.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (Tel: 202/690–1932; E-mail:Nicholas__Memoli@USDA.gov).

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The transportation credit provisions, adopted on an interim basis effective August 10, 1996, were based upon proposals that were considered at a public hearing held May 15–16, 1996, in Charlotte, North Carolina. The proposed modifications to the interim amendments are based upon exceptions to the interim rules and additional testimony heard at a reopened hearing held December 17–18, 1996, in Atlanta, Georgia.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

The milk of approximately 7,000 producers is pooled on the Carolina, Southeast, and Louisville-Lexington-Evansville milk orders. Of these producers, 95 percent produce below the 326,000-pound production guideline and are considered to be small businesses.

There are 38 handlers operating pool plants under the three orders. Of these handlers, 19 have fewer than 500 employees and qualify as small businesses.

The final rules amending the transportation credit provisions will promote orderly marketing of milk by producers and regulated handlers operating within the 3 marketing areas. This rule eliminates the provision which provides for the transfer of funds from the producer-settlement fund to the transportation credit balancing fund when the latter is insufficient to cover the amount of credits to be distributed to handlers for a given month. Thus, the possibility of a reduction of uniform prices resulting from transportation credits will no longer exist.

This final rule also modestly increases the handler assessment from 6 cents to 6.5 cents per hundredweight of Class I producer milk in the Carolina market and to 7 cents per hundredweight in the Southeast market, but maintains the current 6-cent assessment in the Louisville-Lexington-Evansville market. A 6-cent per hundredweight assessment translates to approximately one-half cent per gallon of milk. The one-half to one cent assessment increase in Federal Orders 1005 and 1007 will not negatively impact small businesses.

At present, all handlers regulated under the 3 milk orders involved in this proceeding file a monthly report of receipts and utilization with the market administrator. The proposed amendments will not significantly add to the amount of information required to be reported by those handlers requesting transportation credits. The estimated time to collect, aggregate, and report this information will vary directly with the amount of milk for which credits are requested, but should not be significant.

Prior documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Final Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Orders: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Extension of Time for Filing Comments: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Extension of Time for Filing Comments: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

Notice of Reopened Hearing: Issued November 19, 1996; published November 25, 1996 (61 FR 59843).

Partial Final Decision: Issued May 12, 1997; published May 20, 1997 (62 FR 27525).

Preliminary Statement

The adoption of the amended orders is based on a producer referendum held in the Louisville-Lexington-Evansville market and a polling of cooperatives in the Carolina and Southeast markets. More than two-thirds of the producers in the Carolina, Southeast and Louisville-Lexington-Evansville markets approved the adoption of the orders as amended. In a poll of cooperatives conducted for the Tennessee Valley market, the order, as amended, was disapproved by more than one-third of the producers eligible to vote. Accordingly, a notice of proposed termination for the Tennessee Valley marketing area will be forthcoming as a result of the producers' vote of disapproval.

A question arises with the possible termination of the Tennessee Valley order. The transportation credit provisions for Orders 5, 7, 11, and 46 were adopted simultaneously for these 4 orders. Because of the overlap in supply areas for these markets, producers in any of the marketing areas of the 4 orders are ineligible for transportation credits under any of the other 3 orders. With the possible termination of Order 11, a question may arise concerning the interpretation of Section 82(c)(2)(ii) in the interim amendments or Section 82(c)(2)(iii) in the final decision amendments as set forth in the **Federal Register** of May 20, 1997, at 62 FR 27525. In either case, the language of those paragraphs in Orders 5, 7, and 46 states that ''the farm on which the milk was produced is not located within the specified marketing areas of this order or the marketing areas of'' the other 3 orders involved in this proceeding. Thus, Orders 5, 7, and 46 refer to ''the Order 11 marketing area.''

If Order 11 is terminated, the question that arises is whether a producer located in the former Tennessee Valley marketing area is still ineligible for a transportation credit under Orders 5, 7, and 46. The Department maintains that the reference to the Order 11 marketing area was merely a convenient geographic reference used in lieu of repeating a lengthy list of counties and cities. Accordingly, the language referring to the marketing area of Federal Order 11 will continue to be interpreted as the territory defined in the Tennessee Valley order.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid orders:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The said orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional Findings. It is necessary in the public interest to make these amendments to the Carolina, Southeast, and Louisville-Lexington-Evansville orders effective August 1, 1997. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The amendments to these orders are known to handlers. The partial final decision containing the proposed amendments to these orders was issued on May 12, 1997.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective August 1, 1997. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Carolina, Southeast, and Louisville-Lexington-Evansville orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in each of the respective orders as hereby amended;

(3) The issuance of the order amending the Carolina, Southeast, and Louisville-Lexington-Evansville orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1005, 1007, and 1046

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1005, 1007, and 1046 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

2. In § 1005.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(5) Receipts of bulk milk from a plant regulated under another Federal order,

except Federal Orders 1007, 1011, and 1046, for which a transportation credit is requested pursuant to § 1005.82, including the date that such milk was received;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(5),(a)(6), and (a)(7) of this section.

§ 1005.32 [Amended]

3. In § 1005.32, a new paragraph (a) is added to read as follows:

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1005.9 (a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a) (5), (6), and (7).

* * * * *

§ 1005.61 [Amended]

4. In § 1005.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

5. § 1005.77 is revised to read as follows:

§ 1005.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1005.71 or to the transportation credit balancing fund pursuant to § 1005.81, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1005.72 or § 1005.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to § 1005.82(a), the additional payment pursuant to this section shall be multiplied by the final proration percentage computed in § 1005.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1005.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 [Amended]

6. In the introductory text of § 1005.78, the number ''1005.81,'' is added following the number ''1005.77,''.

7. In § 1005.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1005.9 (b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

8. § 1005.82 is revised to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from another order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a) (1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1005.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this

section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, and allocated to Class I milk pursuant to § 1005.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1005.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1005.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1007, 1011, or 1046, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c) (1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order's Class I price applicable at the shipping plant's location from the Class I price applicable at the receiving plant as specified in § 1005.53;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) introductory text of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) introductory text of this section.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

9. In § 1007.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1007.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, for which a transportation credit is requested pursuant to § 1007.82, including the date that such milk was received;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

* * * * *

10. In § 1007.32, a new paragraph (a) is added to read as follows:

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a) (5), (6), and (7).

* * * * *

§ 1007.61 [Amended]

11. In § 1007.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

§ 1007.78 [Amended]

12. In the introductory text of § 1007.78, the number ''1007.81,'' is added following the number ''1007.78,''.

§ 1007.81 [Amended]

13. In § 1007.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1007.9 (b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 [Amended]

14. § 1007.82 is revised to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of any payment adjustments based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a) (1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1007.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, allocated to Class I milk pursuant to § 1007.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1007.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1007.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However,

if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1011, or 1046, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c) (1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order's Class I price applicable at the shipping plant's location from the Class I price applicable at the receiving plant as specified in § 1007.52;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) introductory text of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) introductory text of this section.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

21. In § 1046.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, for which a transportation credit is requested pursuant to § 1046.82, including the date that such milk was received;

(6) Receipts of producer milk described in § 1046.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1046.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

* * * * *

22. In § 1046.32, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 1046.32 Other reports.

* * * * *

(c) On or before the 20th day after the end of each month, each handler described in § 1046.9 (a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1046.30(a) (5), (6), and (7).

* * * * *

§ 1046.61 [Amended]

23. In § 1046.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

24. § 1046.77 is revised to read as follows:

§ 1046.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1046.71 or to the transportation credit balancing fund pursuant to § 1046.81, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1046.72 or § 1046.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to § 1046.82(a), the additional payment pursuant to this section shall be multiplied by the final

proration percentage computed in § 1046.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1046.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1046.78 [Amended]

25. In § 1046.78, the number ''1046.81,'' is added following the number ''1046.77,''.

26. In § 1046.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1046.81 Payments to the transportation credit balancing fund.

(a) On or before the 15th day after the end of the month, each handler operating a pool plant and each handler specified in § 1046.9 (b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1046.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

27. Section 1046.82 is revised to read as follows:

§ 1046.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 16th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1046.30(a)(5), bulk milk transferred from another order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1046.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1046.32(c). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a) (1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1046.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1046.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association by the pool plant operator pursuant to § 1046.73(f)(2).

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, and allocated to Class I milk pursuant to § 1046.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1046.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1046.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1011, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c) (1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order's Class I price applicable at the shipping plant's location from the Class I price applicable at the receiving plant as specified in § 1046.52;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) introductory text of this section.

(3) For milk described in paragraph (c)(2) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) introductory text of this section.

Dated: July 17, 1997.

Michael V. Dunn,

Assistant Secretary for Marketing and Regulatory Programs.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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