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Contents

Federal Register

Vol. 62, No. 142

Thursday, July 24, 1997

Agency for Health Care Policy and Research

NOTICES

Meetings:

Health Care Policy and Research Special Emphasis Panel,
39847

Agriculture Department

See Animal and Plant Health Inspection Service

See Forest Service

See Grain Inspection, Packers and Stockyards
Administration

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 39801–
39802

Air Force Department

NOTICES

Environmental statements; availability, etc.:

Norton Air Force Base, CA; surplus real property, 39829

Animal and Plant Health Inspection Service

RULES

Overtime services relating to imports and exports:

Agricultural quarantine and inspection services; user
fees, 39747–39755

NOTICES

Handling, training, and exhibition of potentially dangerous
exotic or wild animals, 39802

Arctic Research Commission

NOTICES

Meetings, 39806

Army Department

NOTICES

Patent licenses; non-exclusive, exclusive, or partially
exclusive:

Battery and capacitor technologies, etc., 39829

Centers for Disease Control and Prevention

NOTICES

Meetings:

Public Health Service Activities and Research at DOE
Sites Citizens Advisory Committee, 39847–39848

Civil Rights Commission

NOTICES

Meetings; State advisory committees:

Connecticut, 39806
Massachusetts, 39806–39807
Vermont, 39806

Coast Guard

RULES

Regattas and marine parades:

Chesapeake Bay Offshore Powerboat Challenge, 39775–
39776

NOTICES

Vessels in distress; emergency response:

Olympic Coast Marine Sanctuary and Strait of Juan de
Fuca; international private sector tug-of-opportunity
system plan, 39885

Commerce Department

See Export Administration Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 39807

Consumer Product Safety Commission

NOTICES

Preliminary hazard determinations; conditions, 39827–
39828

Corporation for National and Community Service

NOTICES

Meetings; Sunshine Act, 39828

Customs Service

NOTICES

Commercial gauger:

Approval—

Inspectorate America Corp., 39887

Defense Department

See Air Force Department

See Army Department

Education Department

NOTICES

Meetings:

Student Financial Assistance Advisory Committee,
39829–39830

Energy Department

See Federal Energy Regulatory Commission

See Hearings and Appeals Office, Energy Department

Environmental Protection Agency

PROPOSED RULES

Air quality implementation plans; approval and
promulgation; various States:

California, 39795–39796

Superfund program:

Toxic chemical release reporting; community right-to-
know—

Additional time to report, 39797–39798

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 39838–
39839

Executive Office of the President

See Trade Representative, Office of United States

Export Administration Bureau

NOTICES

Export privileges, actions affecting:

Tex-Co International, Inc., 39807–39808

Meetings:

Materials Processing Equipment Technical Advisory
Committee, 39808

Federal Aviation Administration**PROPOSED RULES**

Airworthiness directives:

- Empresa Brasileira de Aeronautica S.A., 39791–39793
- Maule, 39789–39791
- New Piper Aircraft, Inc., 39784–39787, 39793–39795
- Raytheon, 39787–39789

Federal Communications Commission**RULES**

Common carrier services:

- Telecommunications Act of 1996; implementation—
- Filing requirements and carrier classifications reform, 39776–39779

Radio stations; table of assignments:

- Arizona, 39779–39780
- Louisiana, 39781
- Nevada et al., 39780
- Texas et al., 39781
- Wyoming, 39780–39781

Television stations; table of assignments:

- Pennsylvania, 39781–39782

PROPOSED RULES

Radio stations; table of assignments:

- Florida, 39798–39799

NOTICES

Agency information collection activities:

- Submission for OMB review; comment request, 39839–39840

Federal Deposit Insurance Corporation**NOTICES**

Federal Deposit Insurance Act:

- Banking participation by persons convicted of crimes, money laundering, or who have entered pretrial diversion or similar programs; policy statement, 39840–39843

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 39843

Federal Emergency Management Agency**RULES**

Food insurance program:

- Write-your-own program—
- Private property insurers assistance, 39908–39914

Federal Energy Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:

- Maritimes & Northeast Pipeline, L.L.C., et al., 39832

Meetings:

- ANR Pipeline Co., 39832

Applications, hearings, determinations, etc.:

- Central Maine Power Co., 39830
- Colorado Interstate Gas Co., 39830
- Columbia Gulf Transmission Co., 39830–39831
- NorAm Gas Transmission Co., 39831
- Northern Natural Gas Co., 39831
- Western Gas Resources, Inc., 39831–39832

Federal Maritime Commission**NOTICES**

Agreements filed, etc., 39843

Freight forwarder licenses:

- American Cargo Express, Inc. et al., 39843–39844

Federal Reserve System**NOTICES**

Banks and bank holding companies:

- Formations, acquisitions, and mergers, 39844
- Permissible nonbanking activities, 39844

Fish and Wildlife Service**NOTICES**

Endangered and threatened species permit applications, 39854

Marine mammals permit applications, 39854–39855

Food and Drug Administration**RULES**

Biological product licenses:

- Well-characterized biotechnology products—
- Approved application changes reporting, 39890–39903

Food additives:

- Paper and paperboard components—
- Dinonylphenol, 39770–39773

NOTICES

Reports and guidance documents; availability, etc.:

- Biological products; approved application changes, 39904–39906

- Biotechnology and Specified Synthetic Biological Products, 39904

Foreign-Trade Zones Board**NOTICES***Applications, hearings, determinations, etc.:*

- Louisiana
- Halter Marine, Inc.; shipbuilding, 39808–39809

Forest Service**NOTICES**

Environmental statements; availability, etc.:

- Tongass National Forest, AK, 39802–39805

Meetings:

- Deschutes Provincial Interagency Executive Committee
- Advisory Committee, 39805
- Water Rights Tasks Force, 39805

Grain Inspection, Packers and Stockyards Administration**NOTICES**

Stockyards; posting and deposting:

- Lafayette County Livestock Auction, AR, et al., 39805
- M & N Horse Sale, AL, et al., 39805–39806

Health and Human Services Department

See Agency for Health Care Policy and Research

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Care Financing Administration

See Health Resources and Services Administration

See Inspector General Office, Health and Human Services Department

See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

NOTICES

Federal claims; interest rates on overdue debts, 39844

Reports; availability, etc.:

- Vital and Health Statistics National Committee, 39844–39847

Health Care Financing Administration

See Inspector General Office, Health and Human Services Department

NOTICES

Agency information collection activities:
Proposed collection; comment request, 39848–39849

Health Resources and Services Administration**NOTICES**

Agency information collection activities:
Proposed collection; comment request, 39849
Committees; establishment, renewal, termination, etc.:
Senior Executive Service Performance Review Board;
membership nominations, 39849–39850

Hearings and Appeals Office, Energy Department**NOTICES**

Cases filed, 39832–39835
Decisions and orders, 39835–39837

Indian Affairs Bureau**NOTICES**

Liquor and tobacco sale or distribution ordinance:
Confederated Tribes of Siletz Indians of Oregon, 39855–
39859
Tribal-State Compacts approval; Class III (casino) gambling:
Sisseton-Wahpeton Sioux Tribe, 39859

Inspector General Office, Health and Human Services Department**PROPOSED RULES**

Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Shared Risk Exception Negotiated Rulemaking
Committee; meetings, 39798

Interior Department

See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau

International Trade Administration**NOTICES**

Antidumping:
Dynamic random access memory semiconductors of one
megabyte or above from—
Korea, 39809–39824
Welded stainless steel pipe from—
Taiwan, 39824
Countervailing duties:
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 39824–39825

Justice Department

See Prisons Bureau

NOTICES

Battery or extreme cruelty and public benefit needs;
determination, 39874–39875
Pollution control; consent judgments:
Town of Cheshire, 39875–39876

Land Management Bureau**NOTICES**

Closure of public lands:
Oregon, 39859–39860
Meetings:
Resource advisory councils—
Montana, 39860
Opening of public lands:
California, 39860–39861

Recreation management restrictions, etc.:
Deschutes National Wild and Scenic River Area, OR;
prohibited acts, 39861

Minerals Management Service**RULES**

Outer Continental Shelf; oil, gas, and sulphur operations:
Pipeline right-of-way applications and assignment of fees;
requirement for filing of transfer, 39773–39775

NOTICES

Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas operations, 39861–39863
Outer Continental Shelf operations:
Western Gulf of Mexico—
Lease sales, 39863–39871
Leasing systems, 39871–39872

Mississippi River Commission**NOTICES**

Meetings; Sunshine Act, 39876

National Aeronautics and Space Administration**NOTICES**

Inventions, Government-owned; availability for licensing,
39876

National Highway Traffic Safety Administration**NOTICES**

Agency information collection activities:
Proposed collection; comment request, 39886
Meetings:
Motor Vehicle Safety Research Advisory Committee,
39886–39887

National Institutes of Health**NOTICES**

Meetings:
National Center for Research Resources, 39850
National Heart, Lung, and Blood Institute, 39850
National Institute of Allergy and Infectious Diseases,
39851
National Institute of Dental Research, 39851
National Institute of Diabetes and Digestive and Kidney
Diseases, 39850
National Institute of Mental Health, 39850–39851, 39852
National Library of Medicine, 39852
Research Grants Division special emphasis panels,
39852–39853
Scientific Counselors Board, 39853

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Deep-water species caught by vessels using trawl gear,
39782–39783
Pacific Ocean perch, 39783
West Coast States and Western Pacific fisheries—
Western Pacific crustacean, 39782

PROPOSED RULES

Marine mammals:
Incidental taking—
North Atlantic Energy Service Corp.; power plant
activities, 39799–39800

NOTICES

Meetings:
Gulf of Mexico Peer Review Panel, 39825

Pacific Fishery Management Council, 39825
 South Atlantic Fishery Management Council, 39826
 Western Pacific Fishery Management Council, 39826

Permits:

Marine mammals, 39826

National Science Foundation

NOTICES

Antarctic Conservation Act of 1978; permit applications, etc., 39876-39877

Meetings:

Chemical and Transport Systems Special Emphasis Panel, 39877

Electrical and Communications Systems Special Emphasis Panels, 39877

Geosciences Advisory Committee, 39877

Geosciences Special Emphasis Panel, 39877-39878

Networking and Communications Research and Infrastructure Special Emphasis Panel, 39878

Nuclear Regulatory Commission

NOTICES

Applications, hearings, determinations, etc.:

Fansteel, Inc., 39878-39880

Paducah Gaseous Diffusion Plant, KY, 39880-39881

U.S. Enrichment Corp., 39881-39882

Office of United States Trade Representative

See Trade Representative, Office of United States

Postal Service

NOTICES

Meetings; Sunshine Act, 39882

Prisons Bureau

RULES

Institutional management:

Mandatory English-as-a-second language program, 39916

Public Health Service

See Agency for Health Care Policy and Research

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board

NOTICES

Agency information collection activities:

Proposed collection; comment request, 39882-39883

Reclamation Bureau

NOTICES

Contract negotiations:

Tabulation of water service and repayment; quarterly status report, 39872-39874

Securities and Exchange Commission

RULES

Securities:

Disclosure Simplification Task Force recommendations, 39755-39770

NOTICES

Self-regulatory organizations; proposed rule changes:

National Association of Securities Dealers, Inc., 39883-39884

Substance Abuse and Mental Health Services Administration

NOTICES

Meetings:

Substance Abuse and Mental Health Services Administration special emphasis panels, 39853-39854

Trade Representative, Office of United States

NOTICES

Tariff-rate quota amount determinations:

Beef from Uruguay, 39884-39885

Transportation Department

See Coast Guard

See Federal Aviation Administration

See National Highway Traffic Safety Administration

Treasury Department

See Customs Service

Separate Parts In This Issue

Part II

Department of Health and Human Services, Food and Drug Administration, 39890-39906

Part III

Federal Emergency Management Agency, 39908-39914

Part IV

Department of Justice, Bureau of Prisons, 39916

Reader Aids

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

Electronic Bulletin Board

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

354.....39747

14 CFR**Proposed Rules:**

39 (5 documents)39784,
39787, 39789, 39791, 39793

17 CFR

228.....39755

229.....39755

230.....39755

232.....39755

239.....39755

240.....39755

249.....39755

21 CFR

176.....39770

314.....39890

600.....39890

601.....39890

610.....39890

640.....39890

28 CFR

544.....39916

30 CFR

250.....39773

256.....39773

33 CFR

100.....39775

40 CFR**Proposed Rules:**

52.....39795

372.....39797

42 CFR**Proposed Rules:**

1001.....39798

44 CFR

62.....39908

47 CFR

32.....39776

43.....39776

64.....39776

73 (6 documents)39779,
39780, 39781

Proposed Rules:

73.....39798

50 CFR

660.....39782

679 (2 documents)39782,
39783

Proposed Rules:

216.....39799

Rules and Regulations

Federal Register

Vol. 62, No. 142

Thursday, July 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 96-038-3]

RIN 0579-AA81

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fee regulations by adjusting the fees charged for certain agricultural quarantine and inspection services we provide in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. We are setting user fees in advance for these services for fiscal years 1997 through 2002. We have determined that the fees must be adjusted to reflect the anticipated actual cost of providing these services through fiscal year 2002.

EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT: For information concerning Program Operations, contact Mr. Jim Smith, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236, (301) 734-8295.

For information concerning rate development, contact Ms. Donna Ford, User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232, (301) 734-8351.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the "regulations") contain provisions for the collection of user fees for certain agricultural quarantine and inspection (AQI) services provided by the Animal and Plant Health Inspection Service (APHIS). These services include, among other things, inspecting certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States from points outside the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

These user fees are authorized by section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a). This statute, known as the Farm Bill, was amended by section 504 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127), on April 4, 1996.

As amended, the Farm Bill provides that APHIS may prescribe and collect fees sufficient to cover the cost of providing AQI services in connection with the arrival, at a port in the customs territory of the United States, of commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The Farm Bill, as amended, also provides that APHIS may prescribe and collect fees sufficient to cover the cost of providing preclearance or preinspection at a site outside the customs territory of the United States to such passengers and vehicles. The Farm Bill, as amended, further states that the fees should be sufficient to cover the cost of administering the fee program, and sufficient to maintain a reasonable balance in the Agricultural Quarantine Inspection User Fee Account. In addition to user fees, the Farm Bill, as amended, authorizes APHIS to assess late payment penalties and interest charges if a person fails to pay a fee when due. The Farm Bill, as amended, establishes a no-year fund, known as the "Agricultural Quarantine Inspection User Fee Account" (Account), in the Treasury of the United States. All fees, late payment penalties, and interest charges collected by APHIS through

fiscal year (FY) 2002 are to be deposited in the Account. For each FY 1997 through 2002, funds in the Account are available to APHIS, until expended, to cover the costs of providing AQI services and administering the AQI program.

For each of FYs 1997 through 2002, fees collected in excess of \$100 million may be used to cover the costs of providing AQI services and are automatically available.

Under the Farm Bill, as amended, we may spend all AQI user fees we collect in excess of \$100 million for FYs 1997 through 2002, as long as we spend the money only to provide AQI services. Any money we do not spend must remain in the Account. After FY 2002, any unobligated balance in the Account and any other amounts collected but not disbursed will be credited to APHIS for future AQI activities.

On January 27, 1997, we published in the **Federal Register** (62 FR 3823-3830, Docket No. 96-038-1) a proposal to amend the regulations by adjusting our user fees for servicing certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States and setting user fees in advance for these services for FY 1997 through 2002.

We solicited comments concerning our proposal for 60 days ending March 28, 1997. We received 15 comments by that date. They were from county and State government agencies, airline industry representatives, maritime representatives, and agriculture representatives, including producers and farmers.

Five commenters approved of the proposal as written. Ten commenters opposed some portion of the proposal, supported part of the proposal, or offered suggestions for improvements. Several commenters disagreed with the amount of our fees, questioned our projections, or questioned fees such as the annual truck decal, the vessel fee, and the aircraft fee versus the international passenger fee. We carefully considered the comments, all of which are discussed below by topic, and reviewed our analysis. However, none of the commenters offered additional information to revise our analysis. In the absence of any new

information, we continue to believe that the analysis presented in the proposal is sound and that the proposed fees are appropriate. Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change.

Fees for 6 Years in Advance

Two commenters disliked our proposal to adopt user fees for 6 years in advance; three commenters liked the idea.

By proposing user fees in advance for a 6-year period, we are responding to comments we received in response to past proposals. Those commenters stated that it was difficult to make business plans without knowing in advance when fees would change and by how much. Also, commenters have, in the past, objected to large fee increases, even though they occurred infrequently. We believe adopting user fees for 6 years in advance alleviates these concerns. Under this rule, business planning should be easier and fee increases will be more gradual.

Vessel Inspection Fee

Two commenters objected to the increase in the vessel inspection fee. They based their objections on the small percentage of ships that are boarded in the Port of Hampton Roads in Virginia.

We inspect almost all internationally arriving vessels at ports of entry in the United States. The user fees for these inspections are based on the total cost of the vessel inspection program. The type of inspection ranges from an exterior inspection from outside the vessel to a boarding of the vessel for full-scale inspection of the interior and cargo. The decision to board a vessel is based on numerous variables, including the origin, cargo, and type of the vessel, which indicate the risk presented by a vessel of introducing foreign pests and diseases into the United States. A system that attempted to account for every possible inspection situation would be unwieldy and expensive to administer and would most likely result in higher user fees.

One commenter suggested that all options to reduce costs should be considered before raising vessel inspection fees.

We agree with the commenter's approach. We are constantly trying to reduce costs and minimize necessary cost increases. We raise our user fees only when necessary to reflect unavoidable cost increases. Likewise, because APHIS user fees reflect the actual cost of providing a service, if we

can reduce the cost of a service, we can reduce the user fee for that service.

User Fees for Commercial Trucks

One commenter questioned why commercial trucks entering the United States from Canada are exempt from paying an APHIS user fee and suggested that trucks from Canada should pay the same fee as trucks entering from Mexico.

APHIS restricts the importation of plants and animals and/or plant and animal products from foreign countries based on the pest or disease risk associated with those imports. In many cases, such imports from Canada present a very low risk, and few restrictions apply. Under these circumstances it is not necessary for APHIS to provide inspection services for commercial trucks from Canada. Because APHIS provides no inspection services, an APHIS user fee is not justified.

One commenter agreed that the lower truck decal price for FY 1997 is warranted. However, the commenter suggested that equity might call for a 1-year moratorium on increasing the individual truck crossing fee so that the two fees would not have a noticeable difference. Another commenter questioned who is subsidizing the shortfall in user fees for providing AQI inspections for trucks using the annual decal during FY 1997.

As explained in the proposed rule, both the truck decal and individual truck crossing fees must be raised. The FY 1997 truck decal cannot be changed because the decals have already been printed and many have been sold. Therefore, APHIS is covering the FY 1997 truck decal shortfall from the reserve fund. However, we believe the individual crossing fee must be increased for FY 1997, to help ensure that the full cost of inspecting these trucks is covered by user fees. It should be noted that, by the date this rule is effective, FY 1997 will be more than half over, and most truck decals are purchased early in the year. Therefore, the disparity between the FY 1997 truck decal fee and the individual crossing fee will be temporary and most likely minimal.

In addition, it is less expensive and more efficient to allow prepayment of fees for commercial trucks than to attempt to collect and process a fee for each arrival. It is possible that individual trucks might pay more in user fees if there were no prepayment provisions. However, the possible loss that will be incurred in FY 1997 if there is a shortfall is more than offset by the

savings of a more efficient collection system.

One commenter stated that the annual decal for commercial trucks violates the law, stating that the decal user fee would not cover the cost of inspections. For example, if the truck with a decal entered the United States enough times, then the average fee per inspection would be lower than the actual cost for the service.

Our user fees cover the cost of providing services for the entire inspection program. Therefore, sometimes fees may be more or less than the actual cost of services received for individual cases. As explained in our proposal, the user fee for the annual decal for commercial trucks is calculated as 20 times the individual crossing fee. The total collected for commercial truck user fees for annual decals and individual crossing fees is expected to recover the cost of providing those inspection services.

Commercial Truck Versus Commercial Aircraft User Fees

One commenter stated that inspecting a commercial truck takes approximately the same amount of time as inspecting a commercial aircraft and implied that the fees should be the same.

In our experience, inspecting a commercial aircraft is much more involved than inspecting a commercial truck, and, therefore, takes longer. The result is a higher user fee for aircraft.

One commenter complained that commercial airlines should be offered quantity discounts similar to that offered commercial trucks through our decal system.

The annual decal available for trucks is a joint APHIS-U.S. Customs Service (Customs) decal covering fees for inspections by both agencies. Commercial trucks may purchase an annual decal for APHIS inspections when they purchase an annual decal from Customs. Although this exact approach would probably not be applicable to aircraft, we appreciate the commenter's suggestion. If we decide to make any changes based on this comment, we will publish a proposal in the **Federal Register** for public comment.

Commercial Aircraft and Airline Passenger User Fees

One commenter pointed out that passenger and aircraft inspection fees would represent a large percent of AQI collections in each year from FY 1997 through 2002. The commenter implied that passenger and aircraft inspection fees subsidize other AQI services. Further, the commenter asserted that

since we do not charge user fees for private vehicles entering the United States at land border ports, it appears that those individuals and vehicles who do pay user fees are subsidizing the inspection process.

Each service category was considered separately. Each category must, through user fee receipts, return enough money to APHIS to cover the cost of providing AQI services to that particular category. Costs were assigned directly to a category when the cost directly related to providing the service. For example, our detector dog program only applies to passenger inspections. Therefore, the passenger inspection fees includes the full costs for the detector dog program. However, where a cost benefits all categories of service, it was pro-rated among the categories based on historic direct labor staff hours.

AQI user fees are used only for user fee related activities. APHIS receives appropriated funds to cover the costs of those AQI services not covered by user fees. This includes, among other things, inspection of passengers and aircraft from Hawaii and Puerto Rico, and certain Mexican land border activities, including pedestrian and personal vehicle inspections. Commercial aircraft and aircraft passenger fees do not subsidize any other AQI services.

One commenter stated that the air passenger fee should cover the inspection of the aircraft as well. Two commenters stated that a separate fee for inspection of the aircraft and its passengers violates the law. The commenters asserted that the inspection of the aircraft for food items and garbage is specifically passenger related. The commenters point out that neither Customs nor the Immigration and Naturalization Service (INS) assess a commercial aircraft fee separate from a passenger fee.

On January 9, 1992, we published a final rule in the **Federal Register** (57 FR 755-773, Docket No. 91-135) that amended our user fees to shift all passenger-related inspection costs from the aircraft user fee to the airline passenger user fee. The airline passenger user fee includes the cost of inspections related to the presence of passengers on aircraft, such as inspection of the passenger cabin. Specifically, the airline passenger user fee covers inspection of the aircraft galley, including garbage, the passenger compartment, the baggage hold, and all related administrative and overhead expenses. The aircraft fee covers the inspection of the aircraft and its cargo.

Passengers and aircraft, and the cargo it carries, pose different risks of bringing foreign diseases and pests into the

United States. For example, passengers may have visited a farm that may present agricultural concerns, or they may be carrying infested fruits or vegetables or infested meat on their persons or in their baggage. Aircraft may be infested with a pest that has escaped from infested cargo or entered the aircraft when it was in an infested locality. Therefore, aircraft or cargo may need to be fumigated or disinfected. For all these reasons, passengers and their baggage must be inspected separately and in a different manner than the aircraft and its cargo.

It seems appropriate that passengers themselves pay the APHIS user fees for passengers. Although airlines collect the APHIS passenger user fee along with the price of the ticket and then remit the APHIS user fee to APHIS, the airlines could be charged a user fee that would cover the entire cost of both aircraft and passenger inspections. If we decide to consider such a change, we will publish a proposal in the **Federal Register** for public comment.

International Trade

One commenter asserted that raising user fees could decrease exports.

Although some countries do not currently charge for export-related services, such as inspections, user fees for these services are being adopted by more and more countries. Therefore, we do not believe that U.S. exporters are at a competitive disadvantage compared with exporters in other countries.

Unrestricted Access to Resources

One commenter suggested that APHIS should not have unrestricted access to resources.

We do not have unrestricted access to the funds collected through our user fees. Congress only gives access to the amount appropriated plus any amount of collected user fees above \$100 million. Our access is also restricted in that we may only use the funds for AQI services rendered.

Congressional Funding

One commenter suggested that "if Congress stopped funding APHIS as a cost cutting measure, then APHIS should reduce spending and expenses."

Congress still funds APHIS with appropriated funds; however, the source of most of the appropriations for AQI services is collected user fees. The cost of providing AQI services is projected to exceed \$100 million for each of the years 1997 through 2002, and the AQI user fees should generate enough funds to cover these costs. As explained in the proposed rule, APHIS automatically has access to user fee funds in excess of

\$100 million that are collected each year, but it takes appropriation action to make that first \$100 million available to APHIS each year. If the full \$100 million is not appropriated during any year between 1997 and 2002, APHIS may find it necessary to increase the amounts of individual user fees through rulemaking, thereby increasing the amount of fees collected in excess of \$100 million. Increasing the fees by the proper amount would generate enough funds to compensate for the user fee funds diverted by an appropriation of less than \$100 million, and would ensure that APHIS has enough funds to cover the costs of providing the AQI services.

Automated Commercial System Investment in FY 1997 and 1998

One commenter approved of our dedicating funds to fully implement our use of Customs' Automated Commercial System (ACS). Several other commenters expressed confusion about how and when the \$3.175 million investment would be made.

We understand the confusion. To clarify, the implementation costs totaling \$6.35 million were originally intended to be spent in FY 1996. Due to technology constraints, we did not implement the system in FY 1996. Therefore, our plan is to spread the implementation over 2 years with a one-time investment of \$3.175 million each year. In the proposed rule, the spending estimates for FYs 1997 and 1998 included \$3.175 million in each year for a total investment of \$6.35 million for ACS implementation.

Cost Cutting and Changes in Inspection Process

One commenter suggested a USDA-wide reorganization in an effort to streamline costs.

A USDA-wide reorganization is outside the scope of our control and beyond the scope of the proposed rule. Nonetheless, we would like to point out that USDA has and is still undergoing reorganization to reduce costs and increase efficiency. As part of this reorganization, APHIS has taken actions to reduce costs and increase efficiency. Many of these actions are discussed later on in this document in response to other comments.

Several commenters questioned increasing the number of inspectors. One commenter asserted the percentage of these increases during FY 1996 did not relate to the growth in airline operations or a change in the form of the agricultural inspections. The commenter also questioned whether the large increase in staff in FY 1996 was a one

time augmentation or a new rate of growth.

The large increase in staff in FY 1996 was mandated by Congress to bring APHIS up to a reasonable level of service. With these new hires, we staffed new terminals, extended service hours, and provided more and better service. We increased staff based on need; however, we do not foresee increases such as in FY 1996 to become the trend. In fact, as stated in our proposal, we are planning to hire only 30 additional officers each year, which is fully in line with our estimates of volume increases.

Several commenters suggested that we should cut costs before raising user fees.

We are always looking for ways to reduce our costs. One cost cutting change we made this year was to centralize our detector dog training program. Previously, we had three separate training centers. These have all been combined into a single facility in Orlando, FL. This facility trains dogs to detect agricultural products.

We are planning in the near future to combine our regional offices into regional hubs over the next several years. Cost savings and better program delivery are two factors considered in this and other reorganizations. In addition, we have reduced Headquarters staffing, which lowers overhead costs.

Several commenters suggested that we should improve efficiency before raising user fees. One commenter specifically suggested that we should find new methods to improve efficiency and enforcement via risk assessment and selective or targeted inspection. One commenter suggested that we need a new approach to the inspection process and should look for innovative ways of performing inspections. One commenter complained that APHIS currently does not seem to use computers for its work. One commenter stated that cost estimates need to consider the need for technology upgrades, such as the development and use of tomographic X-ray equipment.

We are always looking for innovative approaches to improve our efficiency. Along with manual inspections, we use alternative inspection methods and technologies such as automated information systems, X-ray systems, and specially trained detector dogs. Examples of what we are doing in these areas and planned enhancements are described below.

We determine where we need our resources based on risk assessment.

We are focusing on facilitation, education, and compliance. Technology and other more efficient approaches

facilitate inspections. Education informs the public of our mission.

To facilitate passenger clearance, we use the Interagency Border Inspection System (IBIS), where it is available. IBIS contains incoming passenger information. To facilitate cargo movement, we use Customs' ACS and Automated Targeting Systems (ATS), where they are available. Today, more ports are using these systems, and we are continuing to expand the use of these systems to all of our ports. In addition, we are developing a system that will be integrated to ACS and ATS, so we will provide better information and communication with the public about the release and approval of cargo.

In addition, we, along with other Federal inspection agencies, are negotiating with the airlines to develop an advance passenger information system to provide better technology to facilitate passenger clearance.

We continue to expand the use of X-ray equipment as a screening tool in passenger baggage clearance at major international airports. There are X-ray scanning machines located at all foreign-arrival and predeparture sites. X-ray machines are used at international airports and on the U.S.-Mexico border. We replaced old X-ray equipment with modern X-rays which have integrated computers and provide improved quality through enhanced imaging.

In partnership with the Federal Aviation Administration and the Department of the Army, we are developing a tomographic X-ray system that will automatically detect agricultural products in luggage and alert inspectors. When operational, we expect this system to provide more accurate images of the contents of baggage than current X-ray equipment can. We expect to improve our ability to make decisions about inspecting passenger baggage prior to passengers' picking up their baggage. Therefore, we expect to decrease the number of passengers in the inspection area and over time decrease the size of the inspection area thus reducing costs and time delays associated with the inspection process.

The prototype for this tomographic X-ray system is scheduled to be tested in San Juan, PR, in April 1998. As with all of our enhancements, after the pilot test, we plan to implement this new technology at the largest, most active airports where the most people will benefit and there will be the greatest impact. We will adapt the implementation, as needed, to other locations and gradually incorporate this tool throughout all international airports.

We continue to use specially trained dogs to detect prohibited items at major international airports. Detector dogs have proven useful in selecting bags to inspect and we plan to expand this program to meet increased risk.

Several commenters questioned the apparent change in APHIS' role as compared to other Federal inspection agencies. One commenter asserted that APHIS' function in the airport environment is secondary to Customs, as Customs inspectors perform all primary inspections. The comment further asserted that this serves the needs of all agencies adequately without multiplying the hurdles confronting the arriving passenger.

In the past, Customs inspectors opened passenger baggage and notified our inspectors when agricultural products were found. Customs has shifted their focus away from passenger processing to other areas that are more important from its perspective. Our priority continues to be finding agricultural products that could introduce foreign pests and diseases. One of the highest risks is from agricultural products in passenger baggage. Passengers may inadvertently carry infested fruits or vegetables or infected meat in their baggage. Therefore, we still need to open baggage to check for these agricultural products.

In conjunction with both Customs and INS, we find ways to improve processing of passengers and cargo. Along with other Federal inspection agencies, we meet with the aircraft industry at least once a month as a member of the Federal Inspection Committee. As a result of the efforts of these groups and our continued attention to modernizing and improving our inspections, we have several efforts underway to improve efficiency and cut costs.

One commenter questioned whether user fees have any correlation to the amount of services received by the user. One commenter questioned the relative efficiency of one port operation over another. One commenter suggested a sliding scale of fees based on location, efficiency, and general overhead.

We realize that the amount of service for each user varies. However, the number of variables that determines the amount of service or length of time required to provide service is virtually infinite. A system that attempted to account for every possible inspection situation would be unwieldy and expensive to administer and would require the additional expenses to be included in the fee calculation.

Interpretations/Violations

One commenter stated that the Farm Bill, as amended, does not eliminate the annual review requirement.

Since the inception of our user fees, we have performed annual reviews of our user fees and adjusted fees as required. As stated in our proposed rule, we not only intend to monitor our fees throughout each year, but we intend to look closely at adjustments to fees that may be needed in future years. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish proposed fee increases in the **Federal Register** for public comment.

One commenter asserted that the Farm Bill, as amended, does not permit adjustment in advance of a determination of need.

We disagree with the commenter's interpretation of the requirements of the Farm Bill, as amended. The Secretary is under no formal obligation to make a specific determination of need prior to the adjustment of fees. Nonetheless, the user fee adjustments we propose for FYs 1997 through 2002 were all based on cost estimates (i.e. a determination of need) for providing AQI services for future years. None of the fee adjustments will be effective until the fiscal year for which they were proposed. As we stated in our proposed rulemaking (see 62 FR 3824), "(w)e * * * plan to publish a notice in the **Federal Register** prior to the beginning of each fiscal year to remind or notify the public of the user fees for that particular fiscal year * * *. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish, for public comment, proposed fee increases in the **Federal Register**." Therefore, contrary to the commenter's assertions, no fees are being adjusted "in advance of a determination of need."

One commenter suggested that by proposing user fees for 6 years, we avoid notice and comment rulemaking mandated by the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). The commenter also stated that APHIS should be held accountable for timely rulemaking.

APHIS has been actively pursuing different avenues to make user fee rulemaking more timely. Although beneficial for the result, the time spent to develop the user fees, analyze their potential impacts, and have other government organizations review our documents can cause significant delays in implementing our user fees. Therefore, in the past, our user fees have been out of date by the time they are effective. Proposing potential user fees in advance is an attempt to ensure timely rulemaking. Our 6-year proposal has gone through the standard notice and comment rulemaking process as required by the APA. Also, by proposing user fees for a 6-year period, we are responding to comments received in the past by providing information sooner for planning purposes and phasing in gradual increases rather than large increases.

Projections and Cost Estimates

Several commenters stated that our proposed fees were either too high or too low.

We have determined, using the best data available, the cost of each of the services for which we will charge an APHIS user fee. In addition, the services we provide and the cost of providing those services will change over time. Therefore, as stated in our proposal, we intend to monitor our fees throughout the year and review them at least annually. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish proposed fee increases in the **Federal Register** for public comment.

To calculate the proposed user fees, we projected the direct costs of providing AQI services in FYs 1997 through 2002 for each category of service: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The cost of providing these services in prior FYs served as a basis for calculating our projected costs.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. On December 31, 1992, we published a final rule in the **Federal Register** (57 FR 62469-62471, Docket No. 92-148-1) that amended some of our user fees and included a detailed description of these accounting procedures.

As part of our accounting procedures, we established distinct accounting codes to record costs that can be directly related to each inspection activity.

Other costs that cannot be directly charged to individual accounts are charged to "distributable" accounts. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level.

Using these accounting procedures, we calculated the total cost of providing AQI services in each past year by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts.

We then projected total costs to provide each category of service during each future year. Each projection included the costs of program delivery, which are incurred at the State level and below. Also included was a pro rata share of the program direction and support costs, which include items at the regional and headquarters program staff levels. Finally, each projection included a pro rata share of agency-level support costs, which includes activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. Costs for billing and collection services, legal counsel, and rate development services that are directly related to user fee activities are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

Each service category was considered separately. Each category must, through user fee receipts, return enough money to APHIS, to cover the cost of providing AQI services to that particular category.

Several commenters questioned our cost estimates and variances between years. Specifically, commenters questioned the use of volumes, past estimates, and differences between FYs 1995, 1996, and 1997.

In the proposed rule, different components were included in different categories. For example, because FY 1996 spending was used as the basis for calculations, the base amount did not include all of the components that were added to estimated projected costs for FY 1997.

As explained in our proposed rule, we hired 217 new inspectors in FY 1996. Therefore, there was a large increase between FYs 1995 and 1996. In addition, there were differences in the

per employee costs for new employees in various years, because all new hires were not employed for the full year.

The information regarding spending estimates that we provided in the proposed rule was, in scope, the same information that we used to set the new user fees. Our user fees are based on data gathered at the work unit, region, and headquarters levels. For members of the public who, like the commenters, wish to obtain additional information, the names, addresses, and telephone numbers of knowledgeable APHIS personnel were provided in the proposed rule, and are provided in this document, under the heading **FOR FURTHER INFORMATION CONTACT**.

One commenter stated APHIS' vessel volume was a low figure compared with the number that Customs reported entering in FY 1996. A similar comment was received comparing APHIS' international air passenger volume with INS' international air passenger volume.

We acknowledge that our volume figures are lower, but it is easy to explain. First, the Customs number of vessels entering the United States for FY 1996 was for all vessel arrivals. APHIS only charges for the first 15 arrivals of vessels over 100 net tons and exempts vessels sailing solely between the United States and Canada. Secondly, the INS international air passenger volumes include all arriving international passengers. Again, APHIS is interested in a different portion of total international passengers and various passengers are exempt, including all passengers arriving from Canada. Therefore, our projections are and should be different from other Federal inspection agencies.

Reserve Fund

Commenters suggested that the size of the APHIS reserve fund is unjustified. Two commenters stated that a far smaller reserve fund would be adequate. Both of these commenters compared APHIS' reserve fund with INS', which, according to one commenter, maintains a reserve fund of approximately 8 percent of annual operating expenses, or, according to the other commenter, maintains a reserve fund of approximately 1 month's worth of operating costs.

APHIS' user fee authority provides for the maintenance of a reasonable balance in the user fee account. We link the reserve requirement in each category to the category's collection schedule. The reserves for the commercial aircraft and international air passenger user fee accounts are one-fourth of their respective annual costs because those fees are collected in arrears on a

quarterly basis. The reserve requirement for commercial vessels and trucks is one-twelfth of that category's annual costs because those fees are remitted to APHIS monthly. The reserve requirement for loaded railroad cars is one-sixth of that category's annual costs because those fees are remitted to APHIS 2 months in arrears. We continue to believe that a fully funded reserve in each category's user fee account is essential to ensure the continuity of service in cases of bad debt, carrier insolvency, and fluctuations in activity volumes.

Additional Uses for Fees

One commenter suggested additional services that could be funded from the AQI user fees.

We have made no change to the rule based upon this comment since it is outside the scope of this rulemaking proceeding.

Advisory Committee

Two commenters suggested that APHIS should establish an advisory committee to assist in determining appropriate changes to the user fee amounts and expenditure of user fee funds. Both commenters referred to Customs' and INS' advisory committees.

Both Customs and INS are mandated to establish advisory committees. The Farm Bill, as amended, has not authorized an advisory committee for APHIS' AQI user fees. We are taking no action based on these comments at this time. The establishment of an advisory committee is outside the scope of this rulemaking proceeding.

Miscellaneous Comments

Two commenters questioned a USDA reorganization, which would consolidate the labs into five "super-labs" to reduce USDA expenses. They questioned the effect this would have on ship inspections.

APHIS is not involved in any such reorganization. In addition, we are not aware of any such planned USDA reorganization to establish five "super-labs." However, if there was a USDA reorganization to reduce the Department's expenses, that reorganization might not reduce APHIS' vessel inspection expenses.

Miscellaneous

We have made a correction to a typographical error in the user fee for vessel inspections for FY 1997. In the proposed rule, the user fee was shown as \$447.00 in the **SUPPLEMENTARY INFORMATION** under the background and as \$447.50 in the rule portion. The

correct fee should be \$447.00; we have changed the rule portion accordingly.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule, will, over a 6-year period, generally increase user fees for certain international airline passengers, commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars, in order to recover the cost to APHIS of providing services. Some user fees are initially reduced. Amendments to user fees are necessary to adjust for changes in service volume and in costs.

These fee changes will directly affect international commercial maritime vessels of 100 net tons or more, commercial trucks, loaded commercial railroad cars, and commercial aircraft arriving at ports in the customs territory of the United States. The impact of adjusting each fee is discussed separately below.

The fee changes will also directly impact international airline passengers arriving at ports in the customs territory of the United States. However, we have not included a discussion of the effect on airline passengers, as individuals are not covered by the Regulatory Flexibility Act.

Commercial Vessels

According to the Bureau of the Census, there were 334 U.S. businesses in 1992 engaged in water transportation of freight internationally between the United States and foreign ports. Of these businesses, at least 93 percent would be considered small according to SBA criteria for a small entity in this category (i.e., an entity that employs fewer than 500 persons).

APHIS user fees for commercial vessels apply only to those of 100 net tons or more arriving from foreign ports, except vessels sailing solely between Canadian and U.S. ports. All of the United States' oceangoing fleet exceeds 100 net tons, but only a limited portion engages in foreign trade. Data from the Department of Transportation's Maritime Administration shows that there were 319 private oceangoing merchant vessels in the United States at the beginning of 1996. Of these vessels, 127 are tankers and the remainder are dry cargo vessels. The vast majority of the tankers operate nearly exclusively between United States ports. They are therefore not subject to the APHIS

commercial vessel user fee. Those vessels subject to the APHIS user fee are mostly dry cargo vessels operating between the United States and foreign ports. We believe, however, that the impact of the revised APHIS user fees on these vessels is likely to be minimal, whether a vessel is operated by a small or a large entity. Total daily operating costs for dry cargo vessels idle in port averages between \$23,600 and \$26,800. The \$77.50 user fee increase for FY 1997 represents less than 0.4 percent of one day's operating costs of an average dry cargo vessel while in port, and remains \$97.00 below the original fee set in 1991.

For subsequent years, there is either no fee increase (FY 1999) or much smaller increases (\$7.50, FY 1998; \$7.25, FY 2000; \$9.50, FY 2001; and \$9.00, FY 2002). Therefore, we believe the impact of our commercial vessel user fees on small businesses will be minimal.

Commercial Trucks

The SBA criterion for a small trucking firm is one whose annual receipts are less than \$18.5 million. We are unable to accurately estimate the number of U.S. firms that would be considered small by this criterion. However, we believe U.S. firms will be largely unaffected by the proposed fee changes. In 1991, transportation expenses for commercial U.S. trucks traveling from Mexico to the United States varied between \$85.00 and \$175.00 per trip for trucks carrying non-agricultural commodities. Assuming constant costs, adding \$2.00 to the user fee per truck, per crossing,¹ will represent an increase in operating expenses of between 1.1 and 2.4 percent for trucks carrying non-agricultural commodities. Transportation expenses for trucks hauling agricultural commodities ranged from \$300.00 to \$1,700.00 per trip in 1991. Again, assuming constant costs, our user fee increases will represent operating expense increases of between 0.12 and 0.67 percent for trucks hauling agricultural goods. It therefore appears that the impact on small U.S. independent trucking firms will not be significant.

Commercial Railroad Cars

There are five U.S. railroad companies currently transporting goods across the U.S.-Mexican border. These railroad companies will be directly affected by our reduced user fee for this service. These railroad companies will also be

directly affected by the subsequent fee increases. However, we are not increasing this fee until FY 2002, at which time the fee will increase to an amount equal to the current fee. We are not increasing the user fee beyond the current rate. User fee changes will affect direct operating expenses. Two of these railroad companies met the SBA criterion for small entities (i.e., fewer than 1,500 employees). As of 1991, the most recent year for which figures are available, these small railroad companies were transporting between 960 and 2,000 loaded railroad cars into the United States from Mexico annually. These cars were all subject to the APHIS user fee. Assuming a similar number of cars subject to inspection in future years, in FY 1997 reduced user fees will result in a cost savings for these railroad companies of between \$480.00 and \$1,000.00. Specific data on the operating expenses or profit margins of these railroad companies is not available to us. However, we believe the fee changes will not have any significant economic effect on small railroad companies.

Commercial Airlines

We received a comment that suggested that there were basic flaws in our analysis of the impact on commercial airlines required by the Regulatory Flexibility Act. Specifically, the commenter suggested that the analysis should have analyzed the impact on the airline industry's component parts. In addition, the analysis should have taken into consideration that the impact will fall disproportionately on certain airlines.

In the Regulatory Flexibility Analysis prepared for the proposed rule, we used information available from the Bureau of the Census on domestic and international airlines. Our user fees are spread evenly across all incoming international flights, both domestic and international carriers are charged the same fee, regardless of size or location. Certain exceptions are specified in our regulations. All exemptions have been added over time based on suggestions and analysis that their pest risk is close to zero. In response to the comment, we have reviewed the available data and revised our analysis on commercial airlines.

In FY 1995, 241 different companies, both foreign and domestic, had accounts with APHIS to pay user fees for commercial aircraft inspections. The separation of these companies into large and small categories according to Small Business Administration size classifications cannot be determined. While the size distribution of these

carriers that enter the continental United States and subject to the user fee² is unknown, APHIS still anticipates that the impact of the user fee increase will be small regardless of carrier size. The increase of \$6.25 in the first year, and a total increase of \$9.25 over the 6-year period should represent a very small portion of operating costs for an international flight arriving in the United States.

In addition to user fees paid directly by airlines for aircraft inspection, airlines collect user fees on our behalf from passengers. Airlines already have collection and disbursement systems in place for international passengers. We believe it is unlikely that there would be any significant increase in the costs of maintaining these systems as a result of our rule. Airlines will collect trust accounts for user fees collected from passengers. However, airlines may retain any interest earned by monies in such accounts.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

²The following are exempt from the user fee: aircraft moving solely between the United States and Canada, aircraft used exclusively in governmental purposes of the United States or a foreign government, aircraft making an emergency landing, any passenger plane with 64 or fewer seats not carrying cargo such as fresh fruit, aircraft moving from the U.S. Virgin Islands to Puerto Rico, and aircraft making an in transit stop at a port of entry, but not required to go through any portion of the federal clearance process.

¹A decal is also available which allows unlimited border crossings per year for one fee. This decal is available only for trucks which prepay the Customs user fee which applies to them.

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 354.3 is amended by revising paragraphs (b)(1), (c)(1), (c)(3)(i) introductory text, (d)(1), (e)(1), and (f)(1) and by adding a new paragraph (f)(4)(i)(C) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) * * * (1) Except as provided in paragraph (b)(2) of this section, the master, licensed deck officer, or purser of any commercial vessel which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D, and which is either required to make entry at the customs house under 19 CFR 4.3 or is a United States-flag vessel proceeding coastwise under 19 CFR 4.85, shall, upon arrival, proceed to Customs and pay an APHIS user fee. The APHIS user fee for each arrival, not to exceed 15 payments in a calendar year, is shown in the following table. The APHIS user fee shall be collected at each port of arrival.

Effective dates	Amount
September 1, 1997 through September 30, 1997	\$447.00
October 1, 1997 through September 30, 1998	454.50
October 1, 1998 through September 30, 1999	454.50
October 1, 1999 through September 30, 2000	461.75
October 1, 2000 through September 30, 2001	471.25
October 1, 2001	480.25

* * * * *

(c) * * * (1) Except as provided in paragraph (c)(2) of this section, the driver or other person in charge of a commercial truck which is entering the customs territory of the United States and which is subject to inspection under part 330 of this chapter or under 9 CFR, chapter I, subchapter D, must, upon arrival, proceed to Customs and

pay an APHIS user fee for each arrival, as shown in the following table:

Effective dates	Amount
September 1, 1997 through September 30, 1997	\$3.75
October 1, 1997 through September 30, 1998	4.00
October 1, 1998 through September 30, 1999	4.00
October 1, 1999 through September 30, 2000	4.00
October 1, 2000 through September 30, 2001	4.00
October 1, 2001	4.25

* * * * *

(3) * * * (i) The owner or operator of a commercial truck, if entering the customs territory of the United States from Mexico and applying for a prepaid Customs permit for a calendar year, must apply for a prepaid APHIS permit for the same calendar year. Applicants must apply to Customs for prepaid APHIS permits.¹ The following information must be provided, together with payment of an amount 20 times the APHIS user fee for each arrival, except, that through September 30, 1997, the amount to be paid is \$40.00:

* * * * *

(d) * * * (1) Except as provided in paragraph (d)(2) of this section, an APHIS user fee will be charged for each loaded commercial railroad car which is subject to inspection under part 330 of this chapter or under 9 CFR chapter I, subchapter D, upon each arrival. The railroad company receiving a commercial railroad car in interchange at a port of entry or, barring interchange, the railroad company moving a commercial railroad car in line haul service into the customs territory of the United States, is responsible for paying the APHIS user fee. The APHIS user fee for each arrival of a loaded railroad car is shown in the following table. If the APHIS user fee is prepaid for all arrivals of a commercial railroad car during a calendar year, the APHIS user fee is an amount 20 times the APHIS user fee for each arrival.

Effective dates	Amount
September 1, 1997 through September 30, 1997	\$6.50
October 1, 1997 through September 30, 1998	6.50
October 1, 1998 through September 30, 1999	6.50
October 1, 1999 through September 30, 2000	6.75

¹ Applicants should refer to Customs Service regulations (19 CFR part 24) for specific instructions.

Effective dates	Amount
October 1, 2000 through September 30, 2001	6.75
October 1, 2001	7.00

* * * * *

(e) * * * (1) Except as provided in paragraph (e)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is arriving, or which has arrived and is proceeding from one United States airport to another under a United States Customs Service "Permit to Proceed," as specified in title 19, Code of Federal Regulations, §§ 122.81 through 122.85, or an "Agricultural Clearance or Safeguard Order" (PPQ Form 250), used pursuant to title 7, Code of Federal Regulations, § 330.400 and title 9, Code of Federal Regulations, § 94.5, and which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D. Each carrier is responsible for paying the APHIS user fee. The APHIS user fee for each arrival is shown in the following table:

Effective dates	Amount
September 1, 1997 through September 30, 1997	\$59.25
October 1, 1997 through September 30, 1998	59.75
October 1, 1998 through September 30, 1999	59.75
October 1, 1999 through September 30, 2000	60.25
October 1, 2000 through September 30, 2001	61.25
October 1, 2001	62.25

* * * * *

(f) * * * (1) Except as specified in paragraph (f)(2) of this section, each passenger aboard a commercial aircraft who is subject to inspection under part 330 of this chapter or 9 CFR, chapter I, subchapter D, upon arrival from a place outside of the customs territory of the United States, must pay an APHIS user fee. The APHIS user fee for each arrival is shown in the following table:

Effective dates	Amount
September 1, 1997 through September 30, 1997	\$1.95
October 1, 1997 through September 30, 1998	2.00
October 1, 1998 through September 30, 1999	2.00
October 1, 1999 through September 30, 2000	2.05
October 1, 2000 through September 30, 2001	2.10
October 1, 2001	2.15

* * * * *

(4) * * *
(i) * * *

(C) APHIS user fees collected from international passengers pursuant to paragraph (f) of this section shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. APHIS user fees collected from international passengers shall be accounted for separately and shall be regarded as trust funds held by the person possessing such fees as agents, for the beneficial interest of the United States. All such user fees held by any person shall be property in which the person holds only a possessory interest and not an equitable interest. As compensation for collecting, handling, and remitting the APHIS user fees for international passengers, the person holding such user fees shall be entitled to any interest or other investment return earned on the user fees between the time of collection and the time the user fees are due to be remitted to APHIS under this section. Nothing in this section shall affect APHIS' right to collect interest for late remittance.

* * * * *

Done in Washington, DC, this 18th day of July 1997.

Terry L. Medley,
Administrator, Animal and Plant Health Inspection Service.
 [FR Doc. 97-19499 Filed 7-23-97; 8:45 am]
 BILLING CODE 3410-34-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, and 249

[Release Nos. 33-7431 and 34-38850; S7-15-96]

RIN 3235-AG80

Phase Two Recommendations of Task Force on Disclosure Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: In response to the Report of the Task Force on Disclosure Simplification, the Commission proposed for comment the elimination and amendment of certain forms and rules to simplify the disclosure process. After reviewing the comment letters received on the Commission's proposals, the Commission is rescinding two forms and one rule that are no longer necessary or appropriate for the protection of investors. The Commission also is adopting one rule and amending

a number of rules and forms in order to eliminate unnecessary requirements and to streamline the disclosure process.

EFFECTIVE DATE: The new rule and amendments will become effective September 2, 1997. If the EDGAR programming on the amendments affecting Form 8-A (17 CFR 249.208a) and Rule 462(d) (17 CFR 230.462(d)) is not completed by this date, the Commission will select a later effective date for these two amendments and issue an appropriate notice of that date.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Division of Corporation Finance, at (202) 942-2990.

SUPPLEMENTARY INFORMATION: After considering certain recommendations of the Task Force on Disclosure Simplification, as well as the comment letters received by the Commission on its proposals to implement these recommendations, the Commission today is adopting amendments to Item 701¹ of Regulation S-B,² Item 701³ of Regulation S-K,⁴ Rule 401,⁵ Rule 404,⁶ Rule 424,⁷ Rule 462,⁸ Rule 463,⁹ and Rule 497¹⁰ under the Securities Act of 1933 ("Securities Act").¹¹ In addition, the Commission is rescinding Rule 101(c)(5) under Regulation S-T.¹² Amendments are being adopted to Form D,¹³ Form SB-1,¹⁴ Form SB-2,¹⁵ Form S-1,¹⁶ Form S-2,¹⁷ Form S-3,¹⁸ Form S-11,¹⁹ Form S-4,²⁰ Form F-1,²¹ Form F-2,²² and Form F-4²³ under the Securities Act. In addition, the Commission is rescinding Form SR²⁴ under the Securities Act, and Rule 13a-2²⁵ and Form 8-B²⁶ under the Securities Exchange Act of 1934 ("Exchange Act").²⁷ The Commission is

¹ 17 CFR 228.701.
² 17 CFR part 228.
³ 17 CFR 229.701.
⁴ 17 CFR part 229.
⁵ 17 CFR 230.401.
⁶ 17 CFR 230.404.
⁷ 17 CFR 230.424.
⁸ 17 CFR 230.462.
⁹ 17 CFR 230.463.
¹⁰ 17 CFR 230.497.
¹¹ 15 U.S.C. 77a *et seq.*
¹² 17 CFR 232.101(c)(5).
¹³ 17 CFR 239.500.
¹⁴ 17 CFR 239.9.
¹⁵ 17 CFR 239.10.
¹⁶ 17 CFR 239.11.
¹⁷ 17 CFR 239.12.
¹⁸ 17 CFR 239.13.
¹⁹ 17 CFR 239.18.
²⁰ 17 CFR 239.25.
²¹ 17 CFR 239.31.
²² 17 CFR 239.32.
²³ 17 CFR 239.34.
²⁴ 17 CFR 239.61.
²⁵ 17 CFR 240.13a-2.
²⁶ 17 CFR 249.208b.
²⁷ 15 U.S.C. 78a *et seq.*

adopting Rule 12a-8²⁸ under the Exchange Act. In addition, amendments are being adopted with respect to the following Exchange Act rules and forms: Rule 12d1-2,²⁹ Rule 12g-3,³⁰ Rule 13a1,³¹ Rule 15d-3,³² Rule 15d-5,³³ Form 8-A,³⁴ Form 10,³⁵ Form 20-F,³⁶ Form 10-Q,³⁷ Form 10-QSB,³⁸ Form 10-K,³⁹ and Form 10-KSB.⁴⁰

I. Background

In March 1996, the Commission's Task Force on Disclosure Simplification ("Task Force") presented its Report⁴¹ recommending the elimination or modification of many rules and forms, and proposing suggestions for simplifying significant aspects of securities offerings to the Commission. As a result of the Task Force Report, the Commission eliminated 44 rules and four forms last May.⁴²

At the same time that the Commission adopted those changes, it issued a release proposing for comment the elimination or streamlining of additional requirements.⁴³ The proposals contained in that release were based on the Commission's further consideration of the Task Force recommendations.

After reviewing the comment letters received⁴⁴ and further considering the proposals, the Commission has determined to adopt most of the proposals, with certain modifications discussed below. Two of the proposals are not being adopted. First, the Commission had proposed that the Form D federal filing requirement be eliminated for the Regulation D and Section 4(6) exemptions. Filers would have had to continue to prepare Form D and retain it, but not file it with the

²⁸ 17 CFR 240.12a-8.
²⁹ 17 CFR 240.12d1-2.
³⁰ 17 CFR 240.12g-3.
³¹ 17 CFR 240.13a-1.
³² 17 CFR 240.15d-3.
³³ 17 CFR 240.15d-5.
³⁴ 17 CFR 249.208a.
³⁵ 17 CFR 249.210.
³⁶ 17 CFR 249.220f.
³⁷ 17 CFR 249.308a.
³⁸ 17 CFR 249.308b.
³⁹ 17 CFR 249.310.
⁴⁰ 17 CFR 249.310b.

⁴¹ The Task Force Report is available for inspection and copying in the Commission's public reference room. The Report also is posted on the Commission's Internet web site (<http://www.sec.gov>).

⁴² Release No. 33-7300 (May 31, 1996) [61 FR 30397].

⁴³ Release No. 33-7301 (May 31, 1996) [61 FR 30405] ("Proposing Release").

⁴⁴ The eight comment letters received are available for inspection and copying in the Commission's public reference room. Refer to file number S7-15-96. Comment letters that were submitted via electronic mail may be viewed at the Commission's web site: <http://www.sec.gov>.

Commission. After further consideration, the Commission has determined that the information contained in Form D is still useful to the Commission in conducting economic and other analyses of the private placement market. Since the burden of having to file the Form with the Commission is minimal once the filer has prepared the Form, the Commission has determined to retain this requirement.⁴⁵ Second, the Commission has decided to defer consideration of the proposal to permit concurrent registration of a public offering under the Securities Act and a class of securities under the Exchange Act by filing a single form pending consideration of programming issues affecting the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") computer system and modifications to the Commission's record-keeping system that would be required. Nevertheless, the amendments to the short form Exchange Act registration statement, Form 8-A, that are being adopted today (as outlined below) should substantially reduce burdens on issuers. Action may be taken at a later date on the concurrent registration proposal.

The following summarizes the Commission's principal actions contained in this release:⁴⁶

⁴⁵ The Commission is making a conforming change to the text of Form D that became necessary as a result of the revisions to Regulation A in 1992 (Release No. 33-6949 (July 30, 1992) [57 FR 36442]). Those revisions moved, without textual change, the disqualification provisions of the exemption from Rule 252(c), (d), (e) and (f), to Rule 262. The text of the first question in Part E of Form D is being revised to reflect this change.

⁴⁶ The Commission also is adopting two technical amendments that result from the elimination of the cross-reference sheet required by former Item 501(b) of Regulation S-K. Release No. 33-7300. Rule 404 [17 CFR 230.404] under the Securities Act and General Instruction II.B. of Form S-3 [17 CFR 239.13] under the Securities Act are being amended to eliminate references to the cross-reference sheet.

Regulation S-K. Release No. 33-7300. Rule 404 (17 CFR 230.404) under the Securities Act and General Instruction II.B. of Form S-3 (17 CFR 239.13) under the Securities Act are being amended to eliminate references to the cross-reference sheet.

Additionally, the Commission is making technical corrections to Forms 10-K, 10-KSB and 20-F to remove the "Fee Required" caption on the cover page of these Forms. The Commission eliminated the fees associated with these Forms in September 1996. Release No. 33-7331 (September 17, 1996) (61 FR 49957). A technical amendment to General Instruction I of Form 10-K also is being adopted to correct an inaccurate reference to former General Instruction J of that Form.

The Commission also is adopting technical amendments to Forms S-4 and F-4 to clarify that an issuer may use these Forms to increase the size of a previously registered offering. As with other forms, the issuer files an abbreviated registration statement to register additional securities in an amount and at a price that together represent no more than a 20% increase in the maximum

- ◆ Form SR, the use of proceeds report for initial public offerings, is eliminated, and the information currently required by Form SR is required in Exchange Act periodic reports;
- ◆ Form 8-A, the short-form registration statement used by reporting companies to register a class of securities under the Exchange Act, is amended to permit automatic effectiveness for *all* such forms filed and to eliminate certain exhibit requirements;
- ◆ Form 8-B, which pertains to the registration of the securities of successor issuers, is eliminated;
- ◆ American Depositary Receipts ("ADRs") listed on a national securities exchange and registered on Form F-6⁴⁷ under the Securities Act are exempted from the registration requirements of Section 12(b)⁴⁸ of the Exchange Act, although the underlying class of securities is not;
- ◆ Rule 401(c) under the Securities Act is amended to permit an issuer to switch to a shorter Securities Act form at the time any amendment is filed if the issuer has become eligible to use the shorter form;
- ◆ The special filing requirements for radio and television broadcast prospectuses are being eliminated, so that such prospectuses will be filed according to the same requirements applicable to all other prospectuses; and
- ◆ Post-effective amendments to Securities Act registration statements filed solely to add exhibits will become effective automatically upon filing.

II. Forms

A. Form SR

The Commission is eliminating Form SR, the form used by issuers to report their use of proceeds following an initial public offering. Instead, this information will be included in the issuer's Exchange Act periodic reports. The Commission believes that this will make the use of proceeds information more accessible to investors, as these reports are more commonly monitored by the public than Form SR. This information will continue to be required only of first-time registrants.

Currently, Securities Act Rule 463 requires issuers to report on Form SR

aggregate offering price set forth in the earlier effective registration statement. These amendments were adopted to other Securities Act registration forms in May 1995 (Release No. 33-7168 (May 11, 1995) [60 FR 26604]) and should have been adopted with respect to Forms S-4 and F-4.

⁴⁷ 17 CFR 239.36.

⁴⁸ 15 U.S.C. 78l(b).

their use of proceeds following an initial public offering within ten days of the first three months following the effective date of the registration statement, and every six months thereafter, until the later of the termination of the offering or the application of all the offering proceeds.⁴⁹ This Rule is amended to require a first-time registrant to report the use of proceeds in its first periodic Exchange Act report (quarterly report or annual report, whichever is filed first) after effectiveness, and thereafter in each of its periodic Exchange Act reports until the registrant has disclosed the use of all of the proceeds or disclosed the termination of the offering, whichever is later.⁵⁰ Although reporting issuers will now be required to report use of proceeds information on a more frequent basis, the elimination of Form SR and the consolidation of disclosure requirements into the periodic reporting forms should ease reporting burdens on issuers by reducing the number of forms they will be required to file.⁵¹

In addition, the Commission is adopting amendments to Form 20-F, the Exchange Act annual report form applicable to foreign private issuers,⁵² to require disclosure of the use of proceeds information previously contained in Form SR. Foreign private issuers, unlike domestic issuers, are not required to file quarterly reports under the Exchange Act, but are required to submit to the Commission periodic reports prepared in accordance with home jurisdiction requirements. As a result, foreign private issuers will be reporting the use of proceeds information on an annual, rather than quarterly, basis.

Although the disclosure requirements of Form SR are otherwise incorporated into the periodic reports without change, the Commission is adjusting the

⁴⁹ Issuers filed 1,753 Forms SR in fiscal year 1995 and 1,654 Forms SR in fiscal year 1996.

⁵⁰ The Commission also is adopting amendments to Item 701 of Regulation S-K and Item 701 of Regulation S-B that require all of the information currently required by Form SR, and amendments to certain periodic reporting forms under the Exchange Act (Forms 10-Q, 10-QSB, 10-K, and 10-KSB) to cross-reference these disclosure items.

⁵¹ The Commission had proposed incorporating all of the requirements of Form SR into each form of Exchange Act periodic report. In the Proposing Release, however, the Commission solicited comment on whether to streamline the periodic report forms by amending Regulations S-B and S-K to include Item 701(f), which incorporates the Form SR requirements, and amending each Exchange Act periodic report to cross-reference this Item. The latter approach has been implemented for all of the relevant Exchange Act periodic reporting forms except Form 20-F, which does not contain cross-references to Regulation S-K.

⁵² "Foreign private issuer" is defined in Exchange Act Rule 3b-4(c) (17 CFR 240.3b-4(c)).

reporting threshold that triggers disclosure of use of proceeds information to account for inflation. The previous reporting thresholds used in Form SR, the lesser of five percent of the issuer's total offering proceeds or \$50,000, were established in 1971. The Commission is raising the reporting threshold under Item 701 to the lesser of five percent of the issuer's total offering proceeds or \$100,000.⁵³

B. Form 8-A

The Commission is adopting amendments to permit automatic effectiveness of all registration statements made on Form 8-A, the short form registration statement used by a currently reporting company to register a class of securities under Section 12 of the Exchange Act.⁵⁴ The amendments should reduce burdens on filers, and eliminate the current disparate treatment of debt and equity securities registered on that Form. The Commission also is adopting certain technical amendments to streamline the Form and further minimize burdens on filers. Form 8-A requires only a description of the registrant's securities pursuant to Item 202 of Regulation S-K⁵⁵ and the filing of certain exhibits.⁵⁶

Consistent with current staff practice, an issuer registering an initial public offering will be permitted to use Form 8-A even though it will not be subject to reporting until after the effectiveness of that Securities Act registration statement.

Currently, a Form 8-A that is filed to register debt securities is effective automatically. The Commission has determined that there is no reason to differentiate in this respect between debt and equity securities. Staff review of these filings is redundant, given that the Form largely incorporates by

reference information contained in other Commission filings that are subject to staff review. Because the quality of the disclosure available to the public will not be compromised, the Commission is adopting amendments today to make all registration statements filed on Form 8-A effective automatically.⁵⁷

In addition, after soliciting comments from the national securities exchanges and considering the responses received, the Commission has determined that the copy of Form 8-A filed with each relevant national securities exchange need no longer contain certain exhibits because issuers must provide the same information as part of the listing application to the national securities exchanges. As a result, the Commission is eliminating the requirement to file these exhibits with the exchanges.⁵⁸

The amendments adopted today will render the Form 8-A merely a notice of Section 12 registration that becomes effective automatically. The Commission has determined that the Form better serves its purpose as a notice if the Commission is notified separately of each national securities exchange on which a class of securities is registered. As a result, if an issuer is registering a class of securities on two or more national securities exchanges, it should file a separate Form 8-A for each exchange listing.

As noted above, the Commission has deferred action on its proposal to permit concurrent Securities Act and Exchange Act registration without the filing of Form 8-A. The Commission will continue to review Exchange Act registration and the circumstances in which Form 8-A is filed in the context of its ongoing efforts to streamline the registration process.

C. Form 8-B

The Commission has determined that Exchange Act Form 8-B, the registration statement for certain successor issuers, is of limited usefulness. Most successor issuers do not need to file a new registration statement, since they come within the purview of Rule 12g-3. Under this Rule, successor issuers automatically inherit the Exchange Act reporting obligations of their predecessors, and file a Form 8-K to note the succession. As amended today, Rule 12g-3 will address *all* situations in which an issuer succeeds to an Exchange Act registered issuer, so that successor issuers will no longer need to file Form 8-B.

Adopted in 1936, Form 8-B is used by an issuer to register its securities when the issuer has no securities registered under Section 12 of the Exchange Act, but has succeeded to an issuer that has securities registered under Section 12 at the time of the succession.⁵⁹ In order to simplify the registration requirements for successor issuers and eliminate interpretive questions about this little-used Form, the Commission is rescinding Form 8-B today.⁶⁰

The Commission is adopting amendments to Rule 12g-3 to include any transactions or securities that were previously covered by Form 8-B, but not by Rule 12g-3. Pursuant to Rule 12g-3, the equity securities of a non-reporting issuer that succeeds an issuer with equity securities registered under Section 12 are automatically deemed to be registered under Section 12 if the succession occurred by means of merger, consolidation, exchange of securities or acquisition of assets. Rule 12g-3 is now being amended to include other transactions, such as the succession of a non-reporting issuer to more than one reporting issuer, either through consolidation into a new entity or a holding company formation. Currently, in this type of succession, both existing issuers must deregister their securities under the Exchange Act, and the successor must file a Form 8-B. As a result of the amendments adopted today, the securities of the successor issuer will be deemed

⁵³ This amendment raises the threshold from that suggested in the Proposing Release, which simply retained the threshold found in Form SR. The Commission solicited comment on raising the threshold.

⁵⁴ 15 U.S.C. 78l. In 1994, the Commission amended its rules to permit a Form 8-A filed with respect to a class of debt securities to be listed on a national securities exchange to become effective simultaneously with the effectiveness of the Securities Act registration statement pertaining to such debt securities. See Release No. 34-34922 (Nov. 1, 1994) [59 FR 55342]. The amendments to Rule 12d1-2 adopted today clarify the automatic effectiveness procedure applicable to debt securities.

⁵⁵ 17 CFR 229.202. The Commission has amended Form 8-A to require a description of the registrant's securities pursuant to Item 202 of Regulation S-B (17 CFR 228.202) for small business issuers that use Form 8-A.

⁵⁶ Form 8-A registration statements may incorporate by reference information that is contained in other filings made with the Commission.

⁵⁷ See amendments to Rule 12d1-2. Acceleration requests will no longer be required for Forms 8-A, and no effectiveness orders will be issued with respect to such Forms. A Form 8-A filed to register a class of securities under Section 12(b) will become effective upon the later of the filing of the Form 8-A, the Commission's receipt of certification from the national securities exchange, or (if the class of securities is concurrently being registered under the Securities Act) the effectiveness of the related Securities Act registration statement. With respect to a class of securities registered under Section 12(g) of the Exchange Act, the Form 8-A will become effective upon filing, or if the class of securities is concurrently being registered under the Securities Act, the effectiveness of the related Securities Act registration statement, whichever is later. Filers will check the cover page of the Form indicating whether registration is sought under Section 12(b) or 12(g), and also will use the appropriate EDGAR form type.

⁵⁸ These exhibits include, for example, copies of the last annual report filed pursuant to Sections 13 or 15(d) of the Exchange Act, copies of the latest definitive proxy statement filed with the Commission, and copies of the issuer's charter and by-laws. Accordingly, the exhibits are already publicly available.

⁵⁹ 15 U.S.C. 78l. "Succession" is defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2). In the fiscal years 1995 and 1996, the Commission received only 57 and 58 Form 8-B filings, respectively.

⁶⁰ The Commission also is adopting certain technical amendments to account for the elimination of Form 8-B. Conforming language changes are adopted with respect to Rule 13a-1 of the Exchange Act, and Rule 13a-2 of the Exchange Act is eliminated. The Commission is adopting amendments to Rule 12g-3 to incorporate the substance of these Rules.

automatically registered under Section 12 of the Exchange Act.

If the classes of securities issued by each of the predecessor issuers are registered under the same paragraph of Section 12,⁶¹ the class of securities issued by the successor issuer will be deemed registered under the same paragraph of Section 12. If the classes of securities issued by the predecessor issuers each are registered under different paragraphs of Section 12, then the class of securities issued by the successor issuer will be deemed registered under Section 12(g). Consistent with prior practice, the successor issuer will file a Form 8-K with respect to the succession transaction and subsequently comply with all of the applicable provisions of the Exchange Act.⁶²

In the situation where the classes of securities issued by the predecessor issuers each are registered under different paragraphs of Section 12, the Commission initially had proposed that the successor issuer would be able to elect the Section 12 paragraph under which it would be deemed registered. However, upon further consideration, the Commission has determined that deeming successor issuers to be registered under Section 12(g) would be preferable in case an issuer is late in filing its Form 8-K and designating the paragraph of Section 12 under which its securities should be deemed registered. If the successor decides to list its securities on a national securities exchange, it will register its securities under Section 12(b) by filing a Form 8-A, which has been streamlined into a simplified notice that will be automatically effective as a result of the amendments adopted today.

In addition to these changes, the Commission is amending Rule 12g-3 to clarify that it applies to issuers with securities registered under Section 12(b) of the Exchange Act,⁶³ as well as to those with securities registered under

Section 12(g).⁶⁴ Rule 12g-3 also is being amended to apply to any class of securities, whether exchange-listed, required to be registered under Section 12(g) of the Exchange Act, or voluntarily registered under Section 12(g) of the Exchange Act.⁶⁵

Consistent with some of the amendments being adopted with respect to Rule 12g-3, the Commission is adopting amendments to Exchange Act Rule 15d-5, which pertains to the automatic assumption of reporting obligations by a non-reporting issuer that succeeds to an issuer that has reporting obligations under Section 15(d) of the Exchange Act.⁶⁶ In connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, Rule 15d-5 automatically transfers the Section 15(d) reporting obligations of a predecessor issuer to equity securities issued by a non-reporting successor issuer in connection with the succession. As amended, Rule 15d-5 covers *all* securities issued by a non-reporting issuer, not just equity securities.

III. Registration Requirements

A. Registration Requirements for American Depositary Receipts

The Commission is eliminating the registration requirement under Section 12(b) of the Exchange Act for ADRs⁶⁷ registered on Form F-6⁶⁸ under the

⁶⁴ 15 U.S.C. 78j(g). The securities of a successor to an issuer whose securities are registered under Section 12(g) also will be deemed registered under Section 12(g). A successor issuer who wishes to list its securities on a national securities exchange will file a Form 8-A to register the securities under Section 12(b).

The Commission also is adopting technical amendments to Rule 12g-3 to accommodate the elimination of Form 8-B. Rule 12g-3 is being amended to incorporate the annual report requirements of Rule 13a-2 and the relevant portions of Rule 13a-1, both of which contain references to Form 8-B.

⁶⁵ Section 12(g) of the Exchange Act only requires the registration of equity securities. It is conceivable that Rule 12g-3 as amended could impose reporting obligations on a limited class of issuers not currently subjected by Rule 12g-3 to reporting following a succession because the predecessor issuer had a class of securities registered under Section 12 voluntarily. However, the amendment should not impose any undue burdens as a result of this situation because such an issuer will be able to terminate the registration under Section 12 immediately following the succession.

⁶⁶ 15 U.S.C. 78o(d).

⁶⁷ An American depositary share ("ADS") is the security that represents an ownership interest in deposited securities, and an ADR is the physical certificate that evidences ADSs. Because market participants do not appear to distinguish between ADRs and ADSs, the term "ADR" is used in this Release to refer to either the physical certificate or the security evidenced by such certificate.

⁶⁸ When an ADR facility is created by a Depositary, the Depositary files a Form F-6 to register the ADRs that will be issued from the

Securities Act. This will eliminate the current disparate treatment of ADRs that are listed on a national securities exchange, which must be registered under Section 12(b) of the Exchange Act, compared to ADRs that are traded on the Nasdaq stock market, which need not be registered under Section 12(g) of the Exchange Act.⁶⁹ The Commission is adopting Rule 12a-8⁷⁰ under the Exchange Act to exempt ADRs registered on Form F-6 from the registration requirements of Section 12(b). The Section 12(b) registration requirements, however, will continue to apply to the class of securities underlying the ADRs.

Exempting ADRs from Section 12(b) registration is consistent with the Commission's view of ADRs as separate securities that provide a mechanism for investing in the underlying securities,⁷¹ and will result in the equal treatment of listed and unlisted ADRs. Moreover, eliminating the Section 12(b) registration requirement for ADRs will eliminate unintentional technical violations of the Exchange Act by issuers that register the underlying shares, but neglect to register the ADRs under Section 12(b) by listing the ADRs on the cover page of the Exchange Act registration statement.

As a matter of common practice in Section 12(g) registration statements, issuers provide disclosure with respect to the ADRs even though the ADRs themselves are not being registered. Although it is likely that issuers would follow the same practice regardless of the elimination of Section 12(b) registration for ADRs, the Commission has, upon further consideration, decided to adopt technical amendments to Form 20-F and Form 10 to ensure that issuers continue to provide disclosure

facility. The transaction of offer and sale covered by the registration statement on Form F-6 is the deposit of securities into the facility. The securities so deposited must be separately registered or must be exempt from registration under the Securities Act.

⁶⁹ A foreign issuer whose ADRs trade on Nasdaq must register the common stock underlying the ADRs under Section 12(g) of the Exchange Act.

⁷⁰ Rule 12a-8 refers to the registration requirements of Section 12(a) of the Exchange Act, which is technically correct, rather than Section 12(b), which contains the listing application requirements for securities registered on a national securities exchange. However, registration under Section 12(a) is commonly referred to as Section 12(b) registration.

⁷¹ This view of ADRs as a means of investing in the underlying securities is consistent with the way that ADRs are treated for reporting purposes by institutional investment managers under Section 13(f) of the Exchange Act (15 U.S.C. 78m(f)). The shares of a foreign issuer that are held through ADRs, as well as the shares of such issuer held directly, are reported pursuant to Section 13(f) and Rule 13f-1 (17 CFR 240.13f-1).

⁶¹ A class of securities listed on a national securities exchange must be registered under Section 12(b) (15 U.S.C. 78j(b)). An issuer with total assets of \$10 million or more and a class of equity securities held by at least 500 shareholders of record must register such class of securities pursuant to Section 12(g) [15 U.S.C. 78j(g)]. See also Rule 12g-1 (17 CFR 240.12g-1).

⁶² Items 1 and 2 of Form 8-K [17 CFR 249.308].

⁶³ Under Rule 12g-3 as amended, the securities of a successor to an issuer whose securities are registered under Section 12(b) also will be deemed registered under Section 12(b) and listed on the same national securities exchange. However, the exchange may deregister the securities by filing a Form 25 (17 CFR 249.25) if that is not the case. By operation of Rule 12g-2 (17 CFR 240.12g-2), the securities of the successor issuer will automatically be deemed registered under Section 12(g) of the Exchange Act.

about ADRs in their Exchange Act registration statements.⁷² Because the actual disclosure provided to investors will not be affected by the elimination of Section 12(b) registration, the elimination of such registration requirements should not compromise investor protection.⁷³

B. Securities Act Form Eligibility

The Commission is adopting amendments to Rule 401(c) under the Securities Act to permit an issuer to switch to a shorter Securities Act form at the time of filing any amendment if it has become eligible to use the shorter form since filing its initial registration statement. These amendments should ease filing burdens on issuers without affecting the quality of the disclosure available to investors.

Currently, the form and content of a registration statement and prospectus are determined on the initial filing date. An issuer is not permitted to reevaluate its status until it files a post-effective amendment pursuant to Section 10(a)(3)⁷⁴ of the Securities Act. As amended, Rule 401(c) will permit issuers to determine the appropriate form upon filing any amendment, including pre-effective and post-effective amendments. To ensure that the amendment does not impose new burdens on issuers, the Rule provides that if an issuer files an amendment other than for the purposes of Section 10(a)(3), an issuer is not required to use a form that is different from the one used for its last Section 10(a)(3) amendment, or if none has been filed, its initial registration statement.

C. Rule 424(d)—Radio and Television Broadcast Prospectuses

Today, the Commission is adopting amendments to Rule 424(d) to eliminate the special filing requirements for radio and television broadcast prospectuses.⁷⁵ The Commission has determined that the previous requirement that such

prospectuses be filed at least five days before they were broadcast or otherwise issued to the public was not necessary for investor protection. This is especially true in light of the increasing use of electronic media in securities offerings.⁷⁶ As amended, Rule 424(d) still requires that radio and television broadcast prospectuses be reduced to writing, but such prospectuses will be filed with the Commission according to the requirements applicable to other types of prospectuses. As a result of the amendments adopted today, radio and television broadcast prospectuses must be filed according to the timing specified in rule 424 (between two to five days after use depending on the subject matter of the prospectus).⁷⁷

D. Exhibits

The Commission is adopting Rule 462(d) to permit automatic effectiveness of a post-effective amendment filed solely to add an exhibit, where the exhibit will not affect the disclosure in the prospectus. Adoption of this Rule will eliminate an unnecessary difference in the treatment of issuers that file on Forms S-3/F-3 and all other issuers. Currently, issuers that file on Forms S-3/F-3 can file updated exhibits post-effectively on Form 8-K, which are then automatically incorporated by reference into their prospectuses. However, registrants not filing on Form S-3/F-3 can only file updated exhibits by filing post-effective amendments, which are subject to possible staff review. Even if such amendments are not selected for review, registrants face possible delay between the time the amendments are filed and when they are declared effective. The Commission has determined that automatic effectiveness of certain exhibits is appropriate because staff review before effectiveness is unnecessary, given the generally routine nature of these filings. Rule 462(d) also would be available to foreign governmental issuers that register debt securities on Schedule B using shelf registration procedures.⁷⁸

An issuer will check a box on the cover page of its post-effective amendment to indicate that automatic

effectiveness is requested.⁷⁹ Exhibits that may be filed through this procedure include consents of experts and counsel, and other exhibits that generally would not require revisions to the disclosure in the prospectus.

The Rule adopted today is not intended to affect an issuer's disclosure obligations. Rule 462(d) cannot be used to file exhibits that would trigger the filing of a post-effective amendment to update the prospectus. The Rule also does not permit automatic effectiveness for post-effective amendments that include an exhibit that otherwise should have been filed pre-effectively. In either case, the issuer may not check the box for automatic effectiveness.

IV. Certain Findings

Section 23(a) of the Exchange Act⁸⁰ requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, if any, and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. Furthermore, Section 2 of the Securities Act⁸¹ and Section 3 of the Exchange Act,⁸² as amended by the recently enacted National Securities Markets Improvement Act of 1996,⁸³ provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has considered the amendments discussed in this release in light of the comments received in response to the Proposing Release and the standards in Section 23(a) of the Exchange Act. Because the amendments do not effect any substantive change in the information that would be disclosed by issuers, they do not have any anti-competitive effects. Furthermore, the amendments eliminate unnecessary disclosure requirements and streamline the disclosure process,

⁷⁹ Forms SB-1, SB-2, S-1/F-1, S-2/F-2, S-4/F-4, and S-11 have been amended to include a new check box on the cover page that will permit automatic effectiveness for certain exhibits that have been filed post-effectively. In addition to checking the box, filers should use a new EDGAR form type: POS EX instead of POS AM. Schedule B filers should simply place a checked box on the facing page of the amendment to indicate that automatic effectiveness is requested.

⁸⁰ 15 U.S.C. 78w(a).

⁸¹ 15 U.S.C. 77b.

⁸² 15 U.S.C. 78c.

⁸³ Pub. L. No. 104-290, § 106, 110 Stat. 3416 (1996).

⁷² Item 14(c) of Form 20-F and Item 11 of Form 10.

⁷³ The Commission also is adopting a technical amendment to Rule 15d-3 of the Exchange Act. Although ADRs are no longer subject to registration under the Exchange Act, a reporting obligation may arise with respect to such securities under Section 15(d). Rule 15d-3 previously suspended such reporting obligation if the depositor complied with former Item 4(a) of Form F-6. Because former Item 4(a) no longer exists, see Release No. 33-7300, the Commission is adopting amendments to Rule 15d-3 to clarify that reporting obligations are suspended for all ADRs registered on Form F-6.

⁷⁴ 15 U.S.C. 77j(a)(3).

⁷⁵ Under Section 10(f) of the Securities Act [15 U.S.C. 77j(f)], the Commission is granted the authority to require radio and television broadcast prospectuses to be filed along with other forms of prospectuses used in connection with the sale of the registered securities.

⁷⁶ The amendments adopted today are consistent with the positions set forth in Securities Act Release No. 33-7233 (October 6, 1995) (60 FR 53458) concerning the use of electronic media for delivery purposes.

⁷⁷ Comparable amendments also are being adopted to Rule 497(f), which pertains to the radio and television broadcast prospectuses of investment companies.

⁷⁸ Release Nos. 33-6240 (September 10, 1980) [45 FR 61609] and 33-6424 (September 2, 1982) (47 FR 39809).

thereby promoting efficiency, competition and capital formation.

V. Cost-Benefit Analysis

The amendments adopted in this release represent the second phase of the Commission's consideration of the recommendations of the Task Force on Disclosure Simplification. The Task Force undertook to review Commission rules and forms with the goal of simplifying and modernizing disclosure and filing requirements to reduce the costs of capital raising, without compromising investor protection. The Commission sought and considered input from interested parties on how to simplify the registration and reporting process, and the rule and form changes in this release were developed from those comments.

Most of the commenters indicated that the proposed form and rule changes would streamline and simplify the disclosure process. Because the purpose of the form and rule changes adopted is to eliminate unnecessary requirements, such changes will reduce the overall costs and burdens associated with filing requirements generally.

Form SR. The elimination of Form SR and the amendments to require use of proceeds disclosure instead in Exchange Act periodic reports will reduce the number of filings made by issuers, and therefore should ease reporting burdens. The changes may, however, increase reporting frequency for issuers. Currently, issuers file use of proceeds disclosure on Form SR semi-annually, and in 1996 1,654 Form SRs were filed. As noted in the Proposing Release, it is estimated that approximately 1,470 quarterly reports on Form 10-Q and 490 annual reports on Form 10-K that include the use of proceeds information would be filed each year. It is estimated that 795 quarterly reports on Form 10-QSB and 265 annual reports on Form 10-KSB that include the use of proceeds disclosure would be filed by small business issuers each year. Because issuers are otherwise required to prepare Exchange Act reports and would no longer have to prepare a separate form, any burden resulting from the transfer of the use of proceeds disclosure into the Exchange Act reports is expected to be minimal.

Further, to offset the potential increase in reporting frequency, the amendments increase the threshold that triggers the use of proceeds disclosure (from the lesser of 5% of the total offering proceeds or \$50,000 to the lesser of 5% or \$100,000). This change should reduce somewhat the burden on reporting issuers by limiting the

circumstances in which disclosure is required.

In addition, it is expected that the information on use of proceeds will be received in a more timely fashion (every three months instead of every six months after the first report), and will be more accessible to investors. This information regarding the progress of the offering is useful to investors and Exchange Act reports are more commonly monitored by investors. These benefits should outweigh any increase in reporting burdens from the increased frequency of disclosures.

Form 8-B. Form 8-B is being eliminated because of its limited usefulness. Most issuer successions are now covered by Rule 12g-3 and that Rule is being expanded to cover all situations that formerly triggered the filing of Form 8-B. In 1996, 58 Form 8-B filings were made. The rule changes will eliminate a registration burden on successor issuers, without reducing investor protection, and eliminate interpretive questions about this infrequently used Form.

ADRs. The Exchange Act registration requirement for ADRs listed on a national securities exchange is being rescinded to eliminate a disparity in the registration requirements applicable to listed and non-listed ADRs. As a result, issuers will no longer be required to list the ADRs that are to be traded on a national securities exchange on the cover page of the Exchange Act registration statement. This will eliminate unintentional technical violations by issuers who register the underlying class of securities, but do not include the ADRs on the cover page.

Short Form Registration Statements. Rule 401(c) under the Securities Act is being amended to permit issuers to file an amendment on a shorter Securities Act form than was used in its initial registration statement whenever the issuer is eligible to use a shorter form. This should reduce filing burdens and printing costs by enabling issuers to use a shorter form when filing amendments.

Form 8-A. The amendments to make Form 8-A filings covering equity securities automatically effective should reduce the uncertainty to issuers of possible pre-effective staff review and resultant delays. Since the Form largely incorporates by reference information in other filings already subject to staff review, issuers will benefit from the reduction in uncertainty and redundant disclosure requirements, without harm to investors. The amendments also eliminate the requirement to file with the national exchanges certain exhibits on Form 8-A that already are publicly available. This change will reduce costs

associated with duplicative filing requirements.

VI. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. § 604 that relates to the rescinding of Form SR under the Securities Act, Form 8-B and Rule 13a-2 under the Exchange Act; the addition of Rule 12a-8 under the Exchange Act; and the other amendments to disclosure requirements under the Securities Act and Exchange Act.

As discussed more fully in the FRFA, the Commission's rescinding of form and rule requirements and its adoption of other amendments to simplify and streamline disclosure requirements will affect small entities, as defined by the Commission's rules, but only in the same manner as other entities. The Commission is aware of approximately 1100 Exchange Act reporting companies that currently have assets of \$5 million or less. There is no reliable way of determining how many small businesses may become subject to Commission reporting obligations in the future, or may otherwise be affected by the rule proposals.

The FRFA notes that alternatives for providing different means of compliance for small entities or for exempting small entities from the amendments would be inconsistent with the Commission's statutory mandate of investor protection. The amendments are intended to simplify disclosure obligations for all issuers, irrespective of size, such that further distinctions between companies based on size would not be appropriate.

The Commission received no comments on the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the Proposing Release, and no comment letters specifically addressed to the IRFA.

A complete copy of the FRFA is available in Public File No. S7-15-96.

VII. Paperwork Reduction Act

As set forth in the Proposing Release, Forms 20-F, 10-Q, 10-QSB, 10-K, 10-KSB and 8-A contain collections of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").⁸⁴ The collection of information requirements contained in these forms were submitted to OMB for review and were approved by OMB. These information collections display an OMB control number and expiration date. An agency may not conduct or sponsor, and

⁸⁴ 44 U.S.C. 3501 *et seq.*

a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.

The Commission is deferring consideration of its proposal to permit concurrent registration of a public offering under the Securities Act and a class of securities under the Exchange Act by filing a single form. As a result, the changes to the Form 8-A information collection will be adopted that differ from the proposed changes to that information collection. The total annual burdens associated with Form 8-A will not decrease as much as anticipated under the Proposing Release.

The descriptions and estimated burdens for the other collection of information requirements have not changed, and are set forth in the Proposing Release.

VIII. Statutory Basis for the Amendments

The foregoing amendments are adopted pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 15, 23, 35A and 36 of the Exchange Act, and Sections 8, 24, 38 and 54 of the Investment Company Act of 1940.

List of Subjects

17 CFR Parts 228, 229, 230, 232, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

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

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

The authority citation for part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

2. By amending § 228.701 by revising the heading and adding paragraph (f) to read as follows:

§ 228.701 (Item 701) Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities.

* * * * *

(f) As required by § 230.463 of this chapter, following the effective date of the first registration statement filed

under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)) after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act through the later of disclosure of the application of all the offering proceeds, or disclosure of the termination of the offering. If a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (f)(2) through (f)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (f)(2) through (f)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first periodic report filed pursuant to the Exchange Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed and the Commission file number assigned to the registration statement;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering has terminated and, if so, whether it terminated before the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered

may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses incurred is provided instead of the actual amount of expenses. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (f)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least five (5) percent of the issuer's total offering proceeds or \$100,000 (whichever is less) has been used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied is provided instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others; and

(viii) If the use of proceeds in paragraph (f)(4)(vii) of this Item represents a material change in the use

of proceeds described in the prospectus, the issuer should describe briefly the material change.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

4. By amending § 229.701 by revising the heading and adding paragraph (f) before the Instructions to read as follows:

§ 229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

* * * * *

(f) *Use of Proceeds.* As required by § 230.463 of this chapter, following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)) after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act through the later of disclosure of the application of all the offering proceeds, or disclosure of the termination of the offering. If a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (f)(2) through (f)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (f)(2) through (f)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first periodic report filed pursuant to the Exchange Act, the

issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed and the Commission file number assigned to the registration statement;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering has terminated and, if so, whether it terminated before the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses incurred is provided instead of the actual amount of expense. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (f)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least five (5) percent of the issuer's total offering proceeds or \$100,000 (whichever is less) has been used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied is provided instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others; and

(viii) If the use of proceeds in paragraph (f)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. By amending § 230.401 by revising paragraph (c) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(c) An amendment to a registration statement and prospectus, other than an amendment described in paragraph (b) of this section, may be filed on any shorter Securities Act registration form for which it is eligible on the filing date of the amendment. At the issuer's option, the amendment also may be filed on the same Securities Act registration form used for the most recent amendment described in paragraph (b) of this section or, if no such amendment has been filed, the initial registration statement and prospectus.

* * * * *

3. By amending § 230.404 in paragraph (a) by removing the phrase "cross reference sheet;"

4. By amending § 230.424 in paragraph (d) by removing the phrase "at least five days before it is broadcast or otherwise issued to the public" in the second sentence and in its place adding "in accordance with the requirements of this section".

5. By amending § 230.462 by adding paragraph (d) to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

* * * * *

(d) A post-effective amendment filed solely to add exhibits to a registration statement shall become effective upon filing with the Commission.

6. By amending § 230.463 by revising paragraphs (a) and (b) to read as follows:

§ 230.463 Report of offering of securities and use of proceeds therefrom.

(a) Except as provided in this section, following the effective date of the first registration statement filed under the Act by an issuer, the issuer or successor issuer shall report the use of proceeds pursuant to Item 701 of Regulation S-B or S-K or Item 16(e) of Form 20-F, as applicable, on its first periodic report filed pursuant to Sections 13(a) and 15(d) (15 U.S.C. 78m(a) and 78o(d)) of the Securities Exchange Act of 1934 after effectiveness, and thereafter on each of its subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 through the later of disclosure of the application of all the offering proceeds or disclosure of the termination of the offering.

(b) A successor issuer shall comply with paragraph (a) of this section only if a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer.

* * * * *

7. By amending § 230.497 in paragraph (f) by removing the phrase "at least 5 days before it is broadcast or otherwise issued to the public" in the second sentence and in its place adding "in accordance with the requirements of this section".

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

8. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

9. By amending § 232.101 by removing paragraph (c)(5) and redesignating paragraphs (c)(6) through (c)(18) as paragraphs (c)(5) through (c)(17).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

11. By amending Form SB-1 (referenced in § 239.9) by revising the facing page to read as follows:

(Note: The text of Form SB-1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

Form SB-1

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Form SB-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Amendment No. _____)

(Name of small business issuer in its charter)

(State or jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address and telephone number of principal executive offices)

(Address of principal place of business or intended principal place of business)

(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

* * * * *

12. By amending Form SB-2 (referenced in § 239.10) by revising the facing page to read as follows:

(Note: The text of Form SB-2 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

Form SB-2

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Form SB-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Amendment No. _____)

(Name of small business issuer in its charter)

(State or jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address and telephone number of principal executive offices)

(Address of principal place of business or intended principal place of business)

(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

13. By amending Form S-1 (referenced in § 239.11) by revising the facing page to read as follows:

(Note: The text of Form S-1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM S-1

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box. []

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

By amending Form S-2 (referenced in § 239.12) by revising the facing page to read as follows:

(Note: The text of Form S-2 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM S-2

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box. []

If the registrant elects to deliver its latest annual report to security holders, or a complete and legal facsimile thereof, pursuant to Item 11(a)(1) of this Form, check the following box. []

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the

earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

By amending Form S-3 (referenced in § 239.13) in General Instruction II.B.

by removing the phrase "and cross-reference sheet are" in the third sentence and in its place adding "is". By amending Form S-11 (referenced in § 239.18) by revising the facing page to read as follows:

(Note: The text of Form S-11 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM S-11

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-11

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in governing instruments)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

17. By amending Form S-4 (referenced in § 239.25) by revising the

facing page and by adding General Instruction K to read as follows:

(Note: The text of Form S-4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM S-4
SECURITIES AND EXCHANGE
COMMISSION

Washington, D.C. 20549

FORM S-4
REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public _____.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. []

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

* * * * *

GENERAL INSTRUCTIONS

* * * * *

K. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier

registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

18. By amending Form F-1 (referenced in § 239.31) by revising the facing page to read as follows:

(Note: The text of Form F-1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM F-1
SECURITIES AND EXCHANGE
COMMISSION

Washington, D.C. 20549

Form F-1
REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

(Exact Name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public _____.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the

Securities Act, check the following box. []

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

* * * * *

19. By amending Form F-2 (referenced in § 239.32) by revising the facing page to read as follows:

(Note: The text of Form F-2 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM F-2
SECURITIES AND EXCHANGE
COMMISSION

Washington, D.C. 20549

Form F-2
REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

(Exact Name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public _____.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, check the following box. []

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box. []

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. []

* * * * *

20. By amending Form F-4 (referenced in § 239.34) by revising the facing page and by adding General Instruction H to read as follows:

(Note: The text of Form F-4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM F-4
SECURITIES AND EXCHANGE
COMMISSION

Washington, D.C. 20549

Form F-4
REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

(Exact Name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification Number)

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public

Q _____

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

* * * * *

GENERAL INSTRUCTIONS

* * * * *

H. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

21. By removing and reserving § 239.61 and by removing Form SR.

22. By amending Form D (referenced in § 239.500), Part E, Question 1, by revising the words "17 CFR 230.252 (c), (d), (e) or (f)" to read "17 CFR 230.262".

(Note: The text of Form D does not, and the amendments will not, appear in the Code of Federal Regulations.)

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

23. The authority citation for part 240 continues to read in part as follows:

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

* * * * *

24. By adding § 240.12a-8 to read as follows:

§ 240.12a-8 Exemption of depositary shares.

Depository shares (as that term is defined in § 240.12b-2) registered on Form F-6 (§ 239.36 of this chapter), but not the underlying deposited securities, shall be exempt from the operation of section 12(a) of the Act (15 U.S.C. 78l(a)).

25. By revising the undesignated subject heading preceding § 240.12d1-1 to read as follows:

Certification by Exchanges and Effectiveness of Registration

26. By amending § 240.12d1-2 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 240.12d1-2 Effectiveness of registration.

* * * * *

(b) A registration statement on Form 8-A (17 CFR 249.208a) for the registration of a class of securities under Section 12(b) of the Act (15 U.S.C. 78l(b)) shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act of 1933 ("Securities Act"), upon the later of receipt by the Commission of certification from the national securities exchange or the filing of the Form 8-A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8-A with the Commission, receipt by the Commission of certification from the national securities exchange listed on the Form 8-A or effectiveness of the Securities Act registration statement relating to the class of securities.

(c) A registration statement on Form 8-A (17 CFR 249.208a) for the

registration of a class of securities under Section 12(g) of the Act (15 U.S.C. 78l(g)) shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act, upon the filing of the Form 8-A with the Commission; or

(2) If class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8-A with the Commission or the effectiveness of the Securities Act registration statement relating to the class of securities.

27. By revising § 240.12g-3 to read as follows:

§ 240.12g-3 Registration of securities of successor issuers under section 12(b) or 12(g).

(a) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78l) are issued to the holders of any class of securities of another issuer that is registered pursuant to either section 12 (b) or (g) of the Act (15 U.S.C. 78l (b) or (g)), the class of securities so issued shall be deemed to be registered under the same paragraph of section 12 of the Act unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by § 240.12g3-2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78l) but for this section.

(b) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78l) are issued to the holders of any class of securities of another issuer that is required to file a registration statement pursuant to either section 12(b) or (g) of the Act (15 U.S.C. 78l(b) or (g)) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer shall file a registration statement pursuant to the same paragraph of section 12 of the Act with respect to such class within the period of time the predecessor issuer would

have been required to file such a statement unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by § 240.12g3-2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§ 239.38 or § 239.41 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78l) but for this section.

(c) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78l) are issued to the holders of classes of securities of two or more other issuers that are each registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by § 240.12g3-2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78l) but for this section.

(d) If the classes of securities issued by two or more predecessor issuers (as described in paragraph (c) of this section) are registered under the same paragraph of section 12 of the Act (15 U.S.C. 78l), the class of securities issued by the successor issuer shall be deemed registered under the same paragraph of section 12 of the Act. If the classes of securities issued by the predecessor issuers are not registered under the same paragraph of section 12 of the Act, the class of securities issued by the successor issuer shall be deemed registered under section 12(g) of the Act (15 U.S.C. 78l(g)).

(e) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) according to paragraph (a), (b), (c) or (d) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 of the Act (15 U.S.C.

78n and 78p) to the same extent as the predecessor issuers, except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20-F (§ 249.220f of this chapter) or to use the exemption in § 240.3a12-3.

(2) A foreign private issuer shall be eligible to file on Form 20-F (§ 249.220f of this chapter) and to use the exemption in § 240.3a12-3.

(f) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) according to paragraphs (a), (b), (c) or (d) of this section shall indicate in the Form 8-K (§ 249.308 of this chapter) report filed with the Commission in connection with the succession, pursuant to the requirements of Form 8-K, the paragraph of section 12 of the Act under which the class of securities issued by the successor issuer is deemed registered by operation of paragraphs (a), (b), (c) or (d) of this section. If a successor issuer that is deemed registered under section 12(g) of the Act (15 U.S.C. 78l(g)) by paragraph (d) of this section intends to list a class of securities on a national securities exchange, it must file a registration statement pursuant to section 12(b) of the Act (15 U.S.C. 78l(b)) with respect to that class of securities.

(g) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) according to paragraph (a), (b), (c) or (d) of this section shall file an annual report for each fiscal year beginning on or after the date as of which the succession occurred. Annual reports shall be filed within the period specified in the appropriate form. Each such issuer shall file an annual report for each of its predecessors that had securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) covering the last full fiscal year of the predecessor before the registrant's succession, unless such report has been filed by the predecessor. Such annual report shall contain information that would be required if filed by the predecessor.

28. By revising § 240.13a-1 to read as follows:

§ 240.13a-1 Requirements of annual reports.

Every issuer having securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) shall file an annual report on the appropriate form authorized or prescribed therefor for each fiscal year after the last full fiscal year for which financial statements were filed in its registration statement. Annual reports shall be filed within the

period specified in the appropriate form.

29. By removing and reserving § 240.13a-2.

30. By revising § 240.15d-3 to read as follows:

§ 240.15d-3 Reports for depositary shares registered on Form F-6.

Annual and other reports are not required with respect to Depositary Shares registered on Form F-6 (§ 230.36 of this chapter). The exemption in this section does not apply to any deposited securities registered on any other form under the Securities Act of 1933.

31. By revising paragraph (a) of § 240.15d-5 to read as follows:

§ 240.15d-5 Reporting by successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of any issuer that is not required to file reports pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Act are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to such section shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer shall, after the consummation of the succession, file reports in accordance with section 15(d) of the Act (15 U.S.C. 78o(d)) and the rules and regulations thereunder, unless that issuer is exempt from filing such reports or the duty to file such reports is suspended under section 15(d) of the Act (15 U.S.C. 78o(d)).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

32. The authority citation for part 249 continues to read in part as follows:

Authority 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

33. By amending § 249.208a by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 249.208a Form 8-A, for registration of certain classes of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(c) If this form is used for the registration of a class of securities under Section 12(b) of the Act (15 U.S.C. 78l(b)), it shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"), upon the later of

receipt by the Commission of certification from the national securities exchange listed on the form or the filing of the Form 8-A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8-A with the Commission, receipt by the Commission of certification from the national securities exchange listed on the form, or the effectiveness of the Securities Act registration statement relating to the class of securities.

(d) If this form is used for the registration of a class of securities under Section 12(g) of the Act (15 U.S.C. 78l(g)), it shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act, upon the filing of the Form 8-A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8-A with the Commission or the effectiveness of the Securities Act registration statement relating to the class of securities.

34. By amending Form 8-A (referenced in § 249.208a) by revising paragraph (c) and adding paragraph (d) to General Instruction A, by revising the checkboxes on the cover page, by adding a sentence and blank line for the Securities Act registration statement file number after the checkboxes on the cover page, by revising "Item 1" under "Information Required In Registration Statement", by removing "I." before the first Instruction and by removing Instruction II of the Instructions as to Exhibits to read as follows:

(Note: The text of Form 8-A does not, and the amendments will not, appear in the Code of Federal Regulations.)

FORM 8-A
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-A
FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 8-A

* * * * *

(c) If this form is used for the registration of a class of securities under Section 12(b), it shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"), upon the later

of receipt by the Commission of certification from the national securities exchange listed on this form or the filing of the Form 8-A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8-A with the Commission, receipt by the Commission of certification from the national securities exchange listed on this form or effectiveness of the Securities Act registration statement relating to the class of securities.

(d) If this form is used for the registration of a class of securities under Section 12(g), it shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act, upon the filing of the Form 8-A with the Commission; or

(2) If class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8-A with the Commission or the effectiveness of the Securities Act registration statement relating to the class of securities.

* * * * *

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-A
FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), check the following box. []

If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), check the following box. []

Securities Act registration statement file number to which this form relates:

(if applicable)
* * * * *

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. Description of Registrant's Securities to be Registered

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter) or Item 202 of Regulation S-B (§ 228.202 of this chapter), as applicable.

* * * * *

35. By removing and reserving § 249.208b and by removing Form 8-B.

36. By amending Form 10 (referenced in § 249.210) by revising Item 11 to read as follows:

(Note: The text of Form 10 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM 10

* * * * *

Item 11. Description of Registrant's Securities to be Registered

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter). If the class of securities to be registered will trade in the form of American Depositary Receipts, furnish Item 202(f) disclosure for such American Depositary Receipts as well.

37. By amending Form 20-F (referenced in § 249.220f) by removing from the facing page the words "(Fee Required)" and "(No Fee Required)", by revising the introductory text of paragraph (c) to Item 14 of Part II preceding the Instructions, by revising the caption to Item 16 and by adding paragraph (e) to Item 16 of Part III to read as follows:

(Note: The text of Form 20-F does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

Form 20-F

* * * * *

PART II

Item 14. Description of Securities to be Registered

* * * * *

(c) American Depositary Receipts

If the class of securities to be registered on Form 20-F is to be traded in the form of American Depositary Receipts, furnish the following information:

* * * * *

PART III

* * * * *

Item 16. Changes in Securities, Changes in Security for Registered Securities and Use of Proceeds

* * * * *

(e) Use of proceeds.

If required pursuant to Rule 463 (17 CFR 230.463) under the Securities Act, following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act after effectiveness of its Securities Act registration statement,

and thereafter on each of its subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act through the later of disclosure of the application of all the offering proceeds, or disclosure of the termination of the offering. If a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (e)(2) through (e)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (e)(2) through (e)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first periodic report filed pursuant to the Exchange Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed, the Commission file number assigned to the registration statement;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering has terminated and, if so, whether it terminated before the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses incurred is provided instead of the actual amount of expense. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (e)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least five (5) percent of the issuer's total offering proceeds or \$100,000 (whichever is less) has been used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others; and

(viii) If the use of proceeds in paragraph (e)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

* * * * *

38. By amending Form 10-Q (referenced in § 249.308a) by revising the caption to Item 2 of Part II, and by adding paragraph (d) to Item 2 of Part II preceding the Instruction to read as follows:

(Note: The text of Form 10-Q does not, and the amendments thereto will not appear in the Code of Federal Regulations.)

UNITED STATES

SECURITIES AND EXCHANGE
COMMISSION

Washington, D.C. 20549

FORM 10-Q

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 2. Changes in Securities and Use of Proceeds

* * * * *

(d) If required pursuant to Rule 463 (17 CFR 230.463) of the Securities Act of 1933, furnish the information required by Item 701(f) of Regulation S-K (§ 229.701(f) of this chapter).

* * * * *

39. By amending Form 10-QSB (referenced in § 249.308b) by revising the caption to Item 2 of Part II, and by adding paragraph (d) to Item 2 of Part II preceding the Instruction to read as follows:

(Note: The text of Form 10-QSB does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM 10-QSB

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 2. Changes in Securities and Use of Proceeds

* * * * *

(d) If required pursuant to Rule 463 (17 CFR 230.463) of the Securities Act of 1933, furnish the information required by Item 701(f) of Regulation S-B (§ 228.701(f) of this chapter).

* * * * *

40. By amending Form 10-K (referenced in § 249.310) by removing from General Instruction I.(c) the phrase "General Instruction (I)(1)(a)" and adding in its place "General Instruction (I)(1)(a)", by removing from the facing page the words "(Fee Required)" and "(No Fee Required)", and in Item 5 of Part II by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

(Note: The text of Form 10-K does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM 10-K

* * * * *

PART II

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

* * * * *

(b) If required pursuant to Rule 463 (17 CFR 230.463) of the Securities Act of 1933, furnish the information required by Item 701(f) of Regulation S-K (§ 229.701(f) of this chapter).

* * * * *

By amending Form 10-KSB (referenced in § 249.310b) by removing from the facing page the words "(Fee Required)" and "(No Fee Required)", and in Item 5 of Part II by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

(Note: The text of Form 10-KSB does not, and the amendments thereto will not, appear in the Code of Federal Regulations.)

FORM 10-KSB

* * * * *

PART II

Item 5. Market for Common Equity and Related Stockholder Matters

* * * * *

(b) If required pursuant to Rule 463 (17 CFR 230.463) of the Securities Act of 1933, furnish the information required by Item 701(f) of Regulation S-B (§ 228.701(f) of this chapter).

* * * * *

By the Commission.

Dated: July 18, 1997.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-19444 Filed 7-23-97; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 93F-0428]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of α -(dinonylphenyl)- ω -hydroxy-poly(oxy-1,2-ethanediyl), containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, as a component of defoaming agents used in styrene-butadiene coatings for paper and paperboard intended to contact

food. This action is in response to a food additive petition filed by PPG Industries, Inc.

DATES: Effective July 24, 1997; written objections and requests for a hearing by August 25, 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: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3095.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of January 5, 1994 (59 FR 590), FDA announced that a food additive petition (FAP 3B4363) had been filed by PPG Industries, Inc., One PPG Pl., Pittsburgh, PA 15272 (formerly 440 College Park Dr., Monroeville, PA 15146). The petition proposed to amend the food additive regulations in § 176.200 *Defoaming agents used in coatings* (21 CFR 176.200) and § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210) to provide for the use of α -(dinonylphenyl)- ω -hydroxy-poly(oxy-1,2-ethanediyl), containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, as a defoaming agent used in the production of paper and paperboard and coatings for paper and paperboard intended to contact food. The petitioner has subsequently withdrawn the request for approval of the use of the additive in the production of paper and paperboard and has requested that approval of the additive be limited to use in styrene-butadiene polymer coatings for paper and paperboard intended to contact food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethylene oxide and minute amounts of 1,4-dioxane as impurities resulting from its manufacture. These chemicals have been shown to cause cancer in test animals. Residual amounts of impurities are commonly found as constituents of chemical products, including food additives.

II. Determination of Safety

Under the so-called "general safety clause" of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive, *Scott v. FDA*, 728 F.2d. 322 (6th Cir. 1984).

III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, α -(dinonylphenyl)- ω -hydroxy-poly(oxy-1,2-ethanediyl), containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, will result in exposure to no greater than 25 parts per billion (ppb) of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 75 micrograms per person per day ($\mu\text{g}/\text{person}/\text{day}$) (Refs. 1 and 2).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by ethylene oxide and 1,4-dioxane, the carcinogenic chemicals that may be present as impurities in the additive. The risk

evaluation of ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. Ethylene oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as a component of defoaming agents used in styrene-butadiene coatings for paper and paperboard to be no more than 0.25 part per trillion (ppt) in the daily diet (3 kg), or 0.75 nanogram (ng)/person/day (Refs. 1 and 2). The agency used data from a long-term rodent bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, Germany (Ref. 4), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The author reported that the test material caused significantly increased incidence of squamous cell carcinomas in situ of the forestomach and carcinoma in situ of the glandular stomach in female rats.

Based on the agency's estimate that exposure to ethylene oxide will not exceed 0.75 ng/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.5×10^{-9} , or 1.5 in a billion (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

B. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as a component of defoaming agents used in styrene-butadiene coatings for paper and paperboard to be no more than 0.13 ppt of the daily diet (3 kg), or 0.39 ng/person/day (Refs. 1 and 2). The agency used data from a long-term rodent bioassay on 1,4-dioxane conducted by the National Cancer Institute (Ref. 6), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence

of squamous cell carcinomas in male and female rats and hepatocellular tumors in female rats and male and female mice.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.39 ng/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.4×10^{-11} , or 14 in a trillion (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of ethylene oxide and 1,4-dioxane present as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to the impurities, even under worst-case assumptions, are very low (less than 1.5 in 1 billion).

IV. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a component of defoaming agents used in styrene-butadiene coatings for paper and paperboard intended for contact with food is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 176.200 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.

V. Environmental Impact

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.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 25, 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.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated June 19, 1995, from the Chemistry Review Branch (HFS-247), to the Indirect Additives Branch (HFS-216) entitled "FAP 3B4363 (MATS No. 695; M 2.3 and M 2.4)-PPG Industries, Inc. Dinonylphenol-ethylene oxide adduct for use as a component of defoaming agents used in paper coatings and in the manufacture of paper and paperboard. Submissions dated 7-12-94, 10-4-94, and 11-1-94."
2. Memorandum dated July 11, 1996, from the Chemistry Review Branch (HFS-247), to the Indirect Additives Branch (HFS-216) entitled "FAP 3B4363 (MATS No. 695; M 2.4.1)-PPG Industries, Inc. Dinonylphenol-ethylene oxide adduct for use as a component of defoaming agents used in paper coatings. Telefax submissions dated 9-22-95 and 3-7-96."
3. Kokoski, C. J., "Regulatory Food Additive Toxicology" in *Chemical Safety Regulation and Compliance*, edited by F.

Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24-33, 1985.

4. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intra-gastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

5. Memorandum dated July 24, 1996, from Indirect Additives Branch (HFS-216), to Sara H. Henry, Executive Secretary, Quantitative Risk Assessment Committee (HFS-308), entitled "Estimation of the upper-bound lifetime risk from ethylene oxide and 1,4-dioxane - FAP 3B4363."

6. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.200 is amended in the table in paragraph (d)(3) by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 176.200 Defoaming agents used in coatings.

- | | | | | |
|-----|---|---|---|---|
| * | * | * | * | * |
| (d) | * | * | * | |
| (3) | * | * | * | |

List of substances	Limitations
* * *	* * *
α-(Dinonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl), containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol (CAS Reg. No. 9014-93-1).	For use only in defoaming agents for the production of styrene-butadiene coatings at a level not to exceed 0.05 percent by weight of the finished coating.
* * *	* * *

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Dated: June 10, 1997.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 97-19428 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR
Minerals Management Service**30 CFR Parts 250 and 256**

RIN 1010-AC04

**Pipeline Right-of-Way Applications and
Assignment Fees; Requirements for
Filing of Lease Transfers**

AGENCY: Minerals Management Service,
Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) amends its regulations governing the filing fees charged for processing pipeline right-of-way applications and assignments, and applications for approval of instruments of transfer of a lease or interest. This amendment increases the filing fees for these documents, which will allow MMS to recover the full processing costs.

EFFECTIVE DATE: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, at (703) 787-1607.

SUPPLEMENTARY INFORMATION: MMS last increased the filing fees for pipeline right-of-way applications and assignments on April 1, 1988. At that time, the fee for a pipeline right-of-way application was increased to \$1,400, and the fee for a pipeline right-of-way assignment was increased to \$50. MMS has not changed the \$25 filing fee for instruments of transfer of a lease or interest since the administration of regulations concerning Outer Continental Shelf (OCS) minerals and rights-of-way was transferred to MMS from the Bureau of Land Management in 1982.

During the years since MMS last adjusted these filing fees, the costs to process these documents have increased. MMS conducted in-house cost analyses based on the costs of salaries and benefits, computer time, and overhead in each of the regional offices to determine the average processing cost for each of these documents. The results showed that MMS is undercharging for these services, and, therefore, MMS is increasing the fees.

This rule increases the filing fee for a pipeline right-of-way application from \$1,400 to \$2,350; the filing fee for a pipeline right-of-way assignment from \$50 to \$60; and the filing fee for instruments of transfer of a lease or an interest from \$25 to \$185.

MMS published a notice of proposed rulemaking (NPRM) on August 11, 1995 (60 FR 41034). We received eight comment letters responding to the proposed rule. The comments all opposed the increase in fees. The principal comments and MMS's responses are as follows:

Comment: Commenters opposed the large increase in the fee for transfer of leases. They pointed out that the MMS had proposed an increase of 640 percent. Comments suggested a lesser increase based on the increase in the Consumer Price Index (CPI) or the increase in the Council of Petroleum Accountants Society's (COPAS) Wage Index. Others suggested a specific amount.

Response: Under the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, and Department of the Interior (DOI) implementing policy, MMS is required to charge the full cost for services which provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. We do not have the option of choosing to charge less.

Comment: The bonus, royalty, and rental payments lessees make are more than sufficient to cover any fee increases that might be needed.

Response: Bonus, royalty, and rental payments are compensation for the right to explore for, develop, and produce oil and gas on the lease. Fees covering pipeline rights-of-way applications or transfers and fees covering transfers of leases provide additional benefits not covered by bonus, royalty, and rental payments.

Comment: MMS should improve its business practices and look to reduce costs internally before passing on costs to lessees.

Response: MMS is continuously looking for ways to improve efficiency and lower costs. This increase reflects both the effects of inflation and the effects of added complexity of reviewing lease transfers. These added complexities result from necessary bond reviews.

Comment: Establish a fee schedule for "multiples" of interests transferred when one lessee transfers a number of interests to another party (i.e., \$X per 10 transfers). Also, establish a ceiling on the total cost for these types of "bulk" transfers.

Response: The new fees are based on the total cost of reviewing and approving many applications and requests for transfers. The fee charged for each transaction is an average. If MMS were to set up a system allowing a lesser fee for simple transfers or "bulk" transfers, then the fee for others would need to be higher. MMS chose to charge the same fee for all transactions rather than a higher fee for some transactions and a lower fee for others. A variable fee structure would be difficult to administer and would add unnecessary administrative costs.

Comment: MMS should not index the fees to the CPI. The commenter believed that with automatic increases in costs, MMS would not strive to control expenses or improve work efficiency, and lessees would be precluded from any future comment on fee increases. Others suggested the COPAS Wage Index as the appropriate choice of an index.

Response: We kept the proposed provision to allow future automatic adjustments in the amount of the fee based on the CPI "U". We believe that a broader inflation index such as the CPI "U" is a better indicator of changes in MMS costs than the suggested COPAS Wage Index which specifically reflects costs in the petroleum industry. (Note: the CPI "U" refers to the CPI for all urban consumers.)

However, in response to the comment, we revised the rule to allow MMS to increase the fee by a percentage equal to the percentage increase in MMS costs to process applications. MMS will attempt to minimize cost increases. The rule provides that if the percentage increase in MMS costs is greater than the percentage increase in the CPI "U", MMS will provide notice and opportunity for comment before changing the fee. Author: This document was prepared by John V. Mirabella, Engineering and Operations Division.

Executive Order (E.O.) 12866

This rule is a significant rule under E.O. 12866 and has been reviewed by the Office of Management and Budget (OMB). MMS estimates that the rule will cost industry approximately \$670,000 per year. This is based on the average number of applications, assignments, and transfers handled by the Regions in the past.

E.O. 12988

DOI certified to OMB that this rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any given year on State, local, and tribal governments, or the private sector.

Regulatory Flexibility Act

DOI determined that this rule will not have a significant effect on a substantial number of small entities. The increase in fees charged by MMS is small relative to the cost of operating on the OCS. We expect that the increase in the fees will not affect the number of leases or pipelines that are transferred each year or the number of pipeline right-of-way applications requested each year.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Although OMB previously approved the collections of information required by these regulations prior to this revision, the amount of the filing fees was not subject to OMB review at the time the NPRM was published. Therefore, we did not submit the collections in the NPRM to OMB for review. However, under the new Paperwork Reduction Act, MMS is now required to obtain OMB approval as part of the final rulemaking process. The collections of information in this final rule remain unchanged from the proposed rule. Comments received on the NPRM are discussed earlier in the preamble. The applicable OMB control numbers for the information collections in this final rule are 1010-0050 (30 CFR 250.160 and 250.163) and 1010-0006 (30 CFR 256.64). The information collection aspects of this final rule will not take effect until approved by OMB.

MMS has submitted to OMB information collection packages for 30 CFR part 250, Subpart J, Pipelines and Pipeline Rights-of-Way, which includes the revised requirements in §§ 250.160 and 250.163 (OMB control number 1010-0050); and 30 CFR part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf, which includes the revised requirements in § 256.64 (OMB control number 1010-0006). MMS invites the public and other Federal agencies to comment on the collections of information as discussed below. Send comments regarding any aspect of these collections to the Office

of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (1010-0050 or 1010-0006), 725 17th Street NW., Washington, D.C. 20503. Send a copy of your comments to the Information Collection Clearance Officer, Minerals Management Service, 1849 C Street NW., MS 4230, Washington, D.C. 20240. OMB is required to make a decision concerning the collection of information contained in this final regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, your comments are best assured of being considered by OMB if OMB receives them by August 25, 1997.

MMS collects the information under regulations implementing the OCS Lands Act, as amended. MMS uses the information to ensure the qualification of assignees and that assignees comply with all requirements for holding a pipeline right-of-way. The information required is mandatory and/or required to obtain or retain a benefit under 43 U.S.C. 1331 *et seq.* MMS will protect information considered confidential or proprietary under applicable law and under regulations at 30 CFR 250.18.

The average reporting burden estimates currently approved by OMB for the individual sections revised by this rulemaking are: 140 hours per new right-of-way application (§ 250.160), 8 hours per assignment of right-of-way (§ 250.163), and 5 hours per application for approval of any instrument of transfer (§ 256.64). The total average burden estimates currently approved for OMB control number 1010-0050 are 36 reporting hours and 20 recordkeeping hours. The total average burden estimate currently approved for OMB control number 1010-0006 is 3.5 reporting hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. In addition to the hour burden, the application filing fees represent a cost burden to the respondents. MMS estimates the annual burdens for the application fees are: \$246,750. (new right-of-way applications, § 250.160), \$4,560 (assignments of right-of-way, § 250.163), and \$420,875 (applications for approval of any instrument of transfer, § 256.64).

In calculating the burdens, MMS may have assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption and they

should tell us what the burden hours and costs are that are imposed by this collection of information.

(1) MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the burden hours estimates reasonable for the proposed collection?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the Paperwork Reduction Act requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. The MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component and

(b) Annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Takings Implication Assessment

DOI determined that this rule does not represent a governmental action capable of interfering with constitutionally protected rights. Thus, DOI does not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

DOI determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

List of Subjects for 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: May 9, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR parts 250 and 256 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. Section 250.160 is amended by revising the fifth sentence in paragraph (a) and adding three new sentences following the fifth sentence to read as follows:

§ 250.160 Applications for a pipeline right-of-way grant.

(a) * * * A nonrefundable filing fee of \$2,350 and the rental required under § 250.159(c)(2) of this part must accompany a new right-of-way application. MMS periodically will amend the filing fee based on its experience with the costs for administering pipeline right-of-way applications. If the costs change by a percentage of not more than the percentage change in the CPI "U" since the last change to the filing fee, MMS will amend the application fee by the

percentage of the change in costs without notice and opportunity for comment. If costs increase by a percentage more than the percentage change in the CPI "U" since the last change to the filing fee, MMS will provide notice and an opportunity to comment before it changes the filing fee.

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3. Section 250.163 is amended by revising the last sentence in paragraph (b) and adding three new sentences following the last sentence to read as follows:

§ 250.163 Assignment of a right-of-way grant.

* * * * *

(b) * * * A nonrefundable filing fee of \$60 must accompany the application for the approval of an assignment. MMS periodically will amend the filing fee based on its experience with the costs for administering pipeline right-of-way assignment applications. If the costs increase by more than the CPI "U," MMS will provide notice and opportunity for comment before changing the filing fee. For lesser cost increases or cost reductions MMS will change the fee without such procedures.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

4. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

5. Section 256.64 is amended by revising the first sentence in paragraph (a) (8) as redesignated at 62 FR 27959, May 22, 1997, effective August 20, 1997, and adding three new sentences following the first sentence to read as follows:

§ 256.64 Requirements for filing of transfers.

(a) * * *

(8) A nonrefundable filing fee of \$185 must accompany an application for approval of any instrument of transfer required to be filed. MMS periodically will amend the filing fee based on its experience with the costs for administering lease transfer applications. If the costs increase by more than the CPI "U," MMS will provide notice and opportunity for comment before changing the filing fee. For lesser cost increases or cost reductions MMS will change the fee without such procedures. * * *

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[FR Doc. 97-19383 Filed 7-23-97; 8:45 am]
BILLING CODE 4310-MR-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-97-055]

RIN 2115-AE46

Special Local Regulations for Marine Events; Chesapeake Bay Offshore Powerboat Challenge, Chesapeake Bay, Kent Island, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Chesapeake Bay Offshore Powerboat Challenge race to be held in the Chesapeake Bay, Kent Island, Maryland. These temporary special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: This regulation is effective from 10 a.m. to 6 p.m. EDT (Eastern Daylight Time) on July 26 and 27, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant James Driscoll, Marine Events Coordinator, Commander, Coast Guard Activities, Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, telephone number (410) 576-2676.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not submitted until May 15, 1997. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the public posed by the large number of racing vessels participating in this event.

Discussion of Regulations

On July 26 and 27, 1997, the Chesapeake Bay Power Boat Association will sponsor the Chesapeake Bay Offshore Powerboat Challenge race in the Chesapeake Bay near Kent Island, Maryland. The event will consist of Offshore Performance Boats racing at high speeds along a 3 mile oval course. These regulations are necessary to

control spectator craft and provide for the safety of life and property on navigable waters during the event.

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 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the race boats are actually competing. Because vessels will be allowed to transit the event area between heats, the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated 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). The Coast Guard expects the economic impact of this rule to be minimal, and certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for a short duration in a limited area.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; March 27, 1996), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–T05–055 is added to read as follows:

§ 100.35–T05–055 Chesapeake Bay, Kent Island, Maryland.

(a) *Definitions.* (1) *Regulated area:* The waters of the Chesapeake Bay southeast of the William P. Lane Jr. Memorial Bridge (Route 50/301) commencing at a point on the shoreline at latitude 38°58'50" North, longitude 76°20'07" West, thence west to latitude 38°58'50" North, longitude 38°56'07" North, longitude 76°23'00" West, thence south to latitude 76°23'00" West, thence east to the Kent Island shoreline at latitude 38°56'07" North, longitude 76°21'45" West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations.* (1) Except for participants in the Chesapeake Bay Offshore Powerboat Challenge race and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The Patrol Commander will allow vessel traffic to transit the event area between races.

(c) *Effective dates.* This regulation is effective from 10 a.m. to 6 p.m. EDT on July 26 and 27, 1997.

Dated: July 10, 1997.

Roger T. Rufe, Jr.

Vice Admiral, U.S. Coast Guard Commander, 5th Coast Guard District.

[FR Doc. 97–19406 Filed 7–23–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43, and 64

[CC Docket No. 96–193; FCC 97–145]

Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order (*Order*), the Commission revised the rules governing filing requirements for cost allocation manuals (CAMs) and Automated Reporting Management Information System (ARMIS) reports so that these rules are in accord with the 1996 Act. Specifically, the Order: provides for a uniform filing date of April 1 for all ARMIS reports; reduces the 60-day notice period for a carrier to make changes to its CAM to 15 days; makes permanent our interim rules for measuring inflation, used to adjust the threshold revenue values in our rules; permits carriers to file the interstate carrier quarterly report on an annual basis; and eliminates the supplemental reporting requirement.

This *Order* also addresses a Motion for Reconsideration filed by Anchorage Telephone Utility (ATU). On June 22, 1995, ATU filed a petition seeking a declaratory ruling that it is not required to file ARMIS reports or, in the alternative, a waiver of these filing requirements or rulemaking to amend the Commission's filing requirements. In its Petition for Reconsideration, ATU argues that the Commission should require only incumbent local exchange carriers with more than 2% of the nation's access lines to comply with the CAM and ARMIS filing requirements. In this *Order*, the Commission denies ATU's Petition for Reconsideration and retains the \$107 million annual revenue threshold (adjusted annually for inflation, and since raised to \$109 million) indicating which incumbent local exchange carriers must comply with the Commission's CAM and ARMIS reporting and filing requirements. However, because ATU sufficiently demonstrated that its annual revenues may soon decrease to a level

below the filing and reporting threshold, the Commission granted ATU a limited two-year waiver of the ARMIS reporting requirements.

EFFECTIVE DATE: August 25, 1997.

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

SUPPLEMENTARY INFORMATION: On September 12, 1996, the Commission released an Order and Notice of Proposed Rulemaking (the *Order and NPRM*) (61 FR 50266, September 25, 1996) modifying the rules as directed by the 1996 Act to require only annual ARMIS reports and annual cost allocation manual revisions. Furthermore, because the 1996 Act did not specify how the Commission should measure inflation in adjusting annual revenue thresholds used to define (or identify) those incumbent local exchange carriers that must file these annual reports, the Commission adopted interim rules that adjust those thresholds for inflation using a generally-available inflation index. The *Order and NPRM* sought comment on additional modifications to the rules, such as whether the Commission should modify or eliminate the 60-day advance notice requirement for cost allocation manual revisions as well as which permanent inflation measure the Commission should incorporate into the rules pertaining to carrier classification and reporting requirements.

Paperwork Reduction Analysis

OMB Control No.: 3060-0470.

Expiration Date: 08/31/98.

Title: Computer III Remand

Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards and Implementation of further Cost Allocation Uniformity.

Form No.: N/A.

Estimated Annual Burden: 18 respondents; 300 hours per response (avg.) x 2 responses annually; 10,800 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Needs and Uses: In the Report and Order, the Commission revised these rules to: (1) Provide for a uniform filing date of April 1 for all ARMIS reports; (2) reduce the 60-day notice period for a carrier to make changes to its CAM to 15 days; (3) make permanent the Commission's interim rules for measuring inflation, used to adjust the threshold revenue values in part 43 and §§ 32.11 and 64.904 of the rules; (4) permit carriers to file § 43.22 interstate

carrier quarterly report on an annual basis; and (5) eliminate the § 43.21(b) supplemental reporting requirement. The cost allocation manual is reviewed by the Commission to ensure that all costs are properly classified between regulated and nonregulated activities. The 15-day notice requirement provides the Commission with sufficient time to determine whether further information is required to facilitate its review process and, if necessary, to issue a temporary stay until the carrier submits additional information concerning proposed changes.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

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 these rules because they will not have a significant economic impact on the carriers that must comply with our filing and reporting requirements. This *Order* adjusts our filing and reporting threshold for inflation and allows carriers to file ARMIS reports on an annual basis. As such, it prevents additional carriers from becoming subject to these filing and reporting requirements solely due to the cumulative effect of inflationary pressure. It also reduces the regulatory burden on those carriers that must comply with our ARMIS filing requirements by allowing these reports to be filed only once per year. Accordingly, we certify that the rules adopted or modified in this *Order* will not have a significant economic impact on a significant number of small entities.

Ordering Clause

Accordingly, *it is ordered* that, pursuant to sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996, Pub. L. 104-104, and sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151(a), 154, 201-205, 215, 218 and 220, and section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), parts 32, 43, and 64 of the Commission's rules, 47 CFR parts 32, 43, and 64 are amended.

It is further ordered that, pursuant to sections 402(b)(2)(B) of the Telecommunications Act of 1996, Public Law 104-104, and sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151(a), 154, 201-205, 215, 218 and 220, the Petition for Reconsideration by Anchorage Telephone Utility is denied.

List of Subjects

47 CFR Part 32

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

47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 64

Civil defense, Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rules Changes

Parts 32, 43 and 64 of title 47 of the Code of Federal Regulations are amended to read 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; Telecommunications Act of 1996, Pub. L. 104-104, sec. 402(c), 110 Stat. 56 (1996) as amended unless otherwise noted.

2. Section 32.11 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 32.11 Classification of companies.

(a) * * *

(1) *Class A.* Companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

(2) *Class B.* Companies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold.

* * * * *

3. Section 32.9000 is amended by adding the definition of "indexed

revenue threshold for a given year" in alphabetical order to read as follows:

§ 32.9000 Glossary of terms.

* * * * *

Indexed revenue threshold for a given year means \$100 million, adjusted for inflation, as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index ("GDP-CPI"), for the period from October 19, 1992 to the given year. The indexed revenue threshold for a given year shall be determined by multiplying \$100 million by the ratio of the annual value of the GDP-CPI for the given year to the estimated seasonally adjusted GDP-CPI on October 19, 1992. The indexed revenue threshold shall be rounded to the nearest \$1 million. The seasonally adjusted GDP-CPI on October 19, 1992 is determined to be 100.69.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 is revised to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Section 43.01 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 43.01 Applicability.

* * * * *

(b) Except as provided in paragraph (c) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of the part.

(c) Carriers becoming subject to the provisions of §§ 43.21 and 43.43 for the first time, because their annual operating revenues equal or exceed the indexed revenue threshold for a given year, shall begin collecting data pursuant to such provisions in the calendar year following the publication of that indexed revenue threshold in the **Federal Register**. With respect to such initial filing of reports by any carrier, pursuant to the provisions of § 43.21 (d), (e), (f), (g), (h), (i), (j), and (k), the carrier is to begin filing data for the calendar year following the publication of that indexed revenue threshold in the **Federal Register** by April 1 of the second calendar year following

publication of that indexed revenue threshold in the **Federal Register**.

3. Section 43.21 is amended by revising the first two sentences of paragraph (a), removing paragraph (b), redesignating paragraphs (c) through (g) as paragraphs (b) through (f), revising the newly redesignated paragraphs (b), and (c), the introductory text of (e), and paragraph (f), and adding new paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of the indexed revenue threshold, as defined in § 32.9000, and certain companies (as indicated in paragraph (b) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraph (b) of this section, each annual report required by this section shall be filed no later than April 1 of each year, covering the preceding calendar year. * * *

(b) Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier that has annual operating revenues equal to or above the indexed revenue threshold, as defined in § 32.9000, shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K (or any superseding form) filed with that Commission.

(c) Each miscellaneous common carrier (as defined by § 21.2 of this chapter) with operating revenues for a calendar year in excess of the indexed revenue threshold, as defined in § 32.9000, shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. This letter must be filed no later than April 1 of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the **Federal Register**, but in no event shall such carriers be required to file the letter prior to April 1.

* * * * *

(e) Each local exchange carrier with annual operating revenues equal to or above the indexed revenue threshold

shall file, no later than April 1 of each year, reports showing:

* * * * *

(f) Each local exchange carrier with operating revenues for the preceding year that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access and nonaccess.

(g) Each local exchange carrier for whom price cap regulation is mandatory and every local exchange carrier that elects to be covered by the price cap rules shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to network measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis.

(h) Each local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to customer measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis.

(i) Each local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report containing data from the previous calendar year on a study area basis that are designed to capture trends in telephone industry infrastructure development under price cap regulation.

(j) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report containing data from the previous calendar year on an operating company basis. Such report shall contain statistical data designed to monitor network growth, usage, and reliability.

(k) Each designated interstate carrier with operating revenues for the preceding year that equal or exceed the indexed revenue threshold shall file, no

later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access, and nonaccess.

§ 43.22 [Removed]

4. Section 43.22 is removed.

5. Paragraph (a) of § 43.43 is revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

(a) Each communication common carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in § 32.9000, and that has been found by this Commission to be a dominant carrier with respect to any communications service shall, before making any change in the depreciation rates applicable to its operated plant, file with the Commission a report furnishing the data described in the subsequent paragraphs of this section, and also comply with the other requirements thereof.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402 (b)(2)(B), (c), 110 Stat. 56 (1996), as amended unless otherwise noted. 47 U.S.C. 201, 218, 226, 228, as amended unless otherwise noted.

2. Section 64.903 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 64.903 Cost allocation manuals.

(a) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in § 32.9000 of this chapter, shall file with the Commission within 90 days after the publication of that threshold in the **Federal Register**, a manual containing the following information regarding its allocation of costs between regulated and nonregulated activities:

* * * * *

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 15 days before the carrier plans to implement the changes. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in \$100,000 increments at the account level. Changes in cost apportionment tables must be quantified in \$100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

* * * * *

3. Paragraph (a) of § 64.904 is revised to read as follows:

§ 64.904 Independent Audits.

(a) Each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order of the Commission, shall have an audit performed by an independent auditor on an annual basis, with the initial audit performed in the calendar year after the carrier is first required to file a cost allocation manual. The audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-111 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise

directed by the Chief, Common Carrier Bureau.

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[FR Doc. 97-19534 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-164; RM-8847]

Radio Broadcasting Services; Parker, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230C3 to Parker, Arizona, as that community's second local FM transmission service in response to a petition filed by Rick L. Murphy. See 61 FR 4114, August 7, 1996. Coordinates used for Channel 230C3 at Parker are 34-08-48 and 114-17-12. As Parker, Arizona, is located within 320 kilometers (199 miles) of the Mexico border, the Commission obtained the concurrence of the Mexican government to the allotment of Channel 230C3 at that community. With this action, the proceeding is terminated.

DATES: Effective September 2, 1997. The window period for filing applications for Channel 230C3 at Parker, Arizona, will open on September 2, 1997, and close on October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 230C3 at Parker, Arizona, should be addressed to the Audio Services Division, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96-164, adopted July 9, 1997, and released July 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 230C3 at Parker.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97-19533 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-103; RM-8794, RM-8839]

Radio Broadcasting Services; Smith and Reno, NV, Susanville and Truckee, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Donegal Enterprises, Inc., allot Channel 222C3 to Smith, NV, as the community's first local aural service. See 61 FR 21425, May 10, 1996. At the request of Chris Kidd d/b/a Kidd Communications, the Commission allots Channel 268A at Truckee, CA, as the community's first local aural service, substitutes Channel 271C3 for Channel 269C3 at Reno, NV, modifies the license of Station KRN-V-FM to specify the alternate channel, substitutes Channel 222C2 for Channel 271C2 at Susanville, CA, and modifies the license of Station KHJQ to specify the alternate Class C2 channel. Channel 222C3 can be allotted to Smith, Nevada, in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) south, at coordinates 38-47-39 North Latitude and 119-19-31 West Longitude, to avoid a short-spacing to Station KZSR, Channel 225C, Reno, Nevada. Channel 268A can be allotted to Truckee, California, with a site restriction of 9.3 kilometers (5.8 miles) west, at coordinates 39-17-45 NL; 120-16-57 WL, to avoid a short-spacing to Station KRNG, Channel 267C2, Fallon,

Nevada. Channel 271C3 can be allotted to Reno at Station KRN-V-FM's presently licensed transmitter site, at coordinates 39-35-03 NL; 119-47-52 WL. Channel 222C2 can be allotted to Susanville at the transmitter site specified in Station KHJQ's outstanding construction permit (BPH-961017IB), at coordinates 40-27-13 NL; 120-34-14 WL. With this action, this proceeding is terminated.

DATES: Effective September 2, 1997. The window period for filing applications for Channel 268A at Truckee, CA, and Channel 222C3 at Smith, NV will open on September 2, 1997, and close on October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96-103, adopted July 9, 1997, and released July 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 271C2 and adding Channel 222C2 at Susanville, and by adding Truckee, Channel 268A.

3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 269C3 and adding Channel 271C3 at Reno, and by adding Smith, Channel 222C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97-19532 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-88; RM-9031]

Radio Broadcasting Services; Centennial, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Red Rock Broadcasting, allots Channel 224A at Centennial, Wyoming as the community's first local aural transmission service. See 62 FR 1251, March 14, 1997. Channel 224A can be allotted at Centennial in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) east to avoid a short-spacing to the licensed site of Station KIQZ(FM), Channel 224A, Rawlins, Wyoming. The coordinates for Channel 224A at Centennial are North Latitude 41-19-03 and West Longitude 105-59-55. With this action, this proceeding is terminated.

DATES: Effective September 2, 1997. The window period for filing applications for Channel 224A at Centennial, Wyoming, will open on September 2, 1997, and close on October 3, 1997.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-88, adopted July 9, 1997, and released July 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Centennial, Channel 224A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97-19531 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-105; RM-9046]

Radio Broadcasting Services; Atlanta, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Winn Parish Broadcasting, allots Channel 293A to Atlanta, Louisiana, as the community's first local aural transmission service. See 62 FR 15869, April 3, 1997. Channel 293A can be allotted to Atlanta in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 293A at Atlanta are 31-48-18 NL and 92-44-36 WL. With this action, this proceeding is terminated.

DATES: Effective September 2, 1997. The window period for filing applications will open on September 2, 1997, and close on October 3, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-105, adopted July 9, 1997, and released July 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Atlanta, Channel 293A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97-19530 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-126, RM-8671]

Radio Broadcasting Services; Denison-Sherman, Paris, Jacksboro, TX, and Madill, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by CarePhil Communications and affirms our action in the Report and Order, 61 FR 24465 (May 15, 1996) which substituted Channel 269C1 for Channel 269C3 at Denison-Sherman, TX, substituted FM Channel 252A for Channel 269A at Jacksboro, TX, substituted FM Channel 282C2 for Channel 270C2 at Paris, TX, and FM Channel 273A for Channel 272A at Madill, Oklahoma and modified the necessary FM licenses accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 95-126, adopted July 9, 1997 and released July 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription

Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-19528 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-96; RM-8756]

Television Broadcasting Services; Johnstown and Jeannette, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Venture Technologies Group, Inc., reallocates TV Channel 19+ from Johnstown to Jeannette, Pennsylvania, and modifies Station WTWB-TV's license to specify Jeannette as its new community of license. See 62 FR 14092, March 25, 1997. Channel 19+ can be allotted to Jeannette in compliance with the Commission's minimum distance separation requirements with a site restriction of 41.1 kilometers (25.6 miles) southeast at petitioner's authorized site. The coordinates for TV Channel 19+ at Jeannette are North Latitude 40-10-51 and West Longitude 79-09-46. Since Jeannette is located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-96, adopted July 14, 1997 and released July 18, 1997, full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Pennsylvania, is amended by adding Jeannette, Channel 19+.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97-19527 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 970612136-7136-01; I.D. 071797B]

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1997 Closure

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

ACTION: Closure of the fishery.

SUMMARY: NMFS announces the closure of the Northwestern Hawaiian Islands (NWHI) crustacean fishery due to attainment of the harvest guideline for the 1997 fishing season. Lobster vessels carrying vessel monitoring system (VMS) units must be outside the Crustaceans Permit Area 1 VMS Subarea after the closure date. Vessels without VMS units are prohibited from landing lobster after 96 hours following the closure date. This action is intended to prevent overfishing and to achieve optimum yield according to the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

DATES: Fishing for lobsters in the NWHI is prohibited from 2400 hours (local time) on July 22, 1997, through June 30, 1998. After 2400 hours (local time) July 26, 1997, through June 30, 1998, vessels without VMS units are prohibited from landing lobsters taken from the NWHI.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, 562-980-4034; or Mr. Alvin Z. Katekaru, 808-973-2985.

SUPPLEMENTARY INFORMATION: On June 23, 1997, a harvest guideline of 322,912 spiny and slipper lobsters was published in the **Federal Register** (62 FR 33761) as the allowable harvest permitted in the NWHI for the 1997 fishing season, which began on July 1. Through July 17, approximately 226,000 spiny and slipper lobsters will have been harvested by commercial fishing vessels, and the average daily harvest has been more than 16,000 lobsters. Based on recent daily catch rates for the fishing fleet, the Acting Regional Administrator of the Southwest Region projects that the harvest guideline will be reached and, therefore, the lobster season will close at 2400 hours (local time) on July 22. Further, for vessels without VMS units, landings of lobster taken in Permit Area 1 are prohibited after 2400 hours (local time) July 26, 1997.

On July 1, 1997, a final rule implementing a VMS program in the crustacean fishery of the NWHI was published in the **Federal Register** (62 FR 35448). Lobster vessels carrying VMS units are prohibited from possessing lobster traps in Crustaceans Permit Area 1 VMS Subarea after the closure date. The Acting Regional Administrator of the Southwest Region has determined that lobster vessels without VMS units will be prohibited from landing lobster 96 hours following the closure date.

Classification

This action is authorized by 50 CFR part 660.50 and is not subject to review under E.O. 12866.

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

Dated: July 18, 1997.

Gary C. Matlock,

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

[FR Doc. 97-19557 Filed 7-21-97; 3:38 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 961126334-7025-02, I.D. 071897A]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 1997, until 1200 hrs, A.l.t., October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

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

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established as 400 metric tons by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) for the third season, the period July 1, 1997 through September 30, 1997.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 1997 Pacific halibut bycatch mortality allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, the Regional Administrator is closing directed fishing for species that comprise the deep-water

species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, rex sole, arrowtooth flounder, and sablefish.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the third seasonal allowance of halibut mortality in the GOA. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet will soon take the seasonal allowance of halibut mortality. Further delay would only result in the seasonal allowance being exceeded and disrupt the FMP's objective of seasonally apportioning halibut mortality throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: July 18, 1997.

Gary C. Matlock,

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

[FR Doc. 97-19457 Filed 7-21-97; 10:40 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334-7025-02; I.D. 071897B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Pacific ocean perch 1997 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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

The 1997 TAC of Pacific ocean perch in the Central Regulatory Area of the

GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 5,352 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 1997 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA; therefore, providing notice and opportunity for public comment is impracticable and contrary to public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. The fleet has already taken the TAC for Pacific ocean perch. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. Accordingly, under 5 U.S.C. 553(d)(1), a delay in the effective date is hereby waived.

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

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

Dated: July 18, 1997.

Gary C. Matlock,

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

[FR Doc. 97-19458 Filed 7-21-97; 10:40 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 62, No. 142

Thursday, July 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-65-AD]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA-31, PA-31-300, PA-31-325, PA-31-350, and PA-31P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 79-01-04, which currently requires repetitively inspecting the elevator bungee spring for cracks or surface deformities on certain Piper Aircraft Corporation (known currently as The New Piper Aircraft, Inc.) Model PA-31-350 airplanes, and replacing any elevator bungee spring with cracks or surface deformities. The proposed AD would retain the repetitive inspection and replacement requirements from AD 79-01-04 on The New Piper Aircraft, Inc. (Piper) Model PA-31-350 airplanes until an elevator bungee spring of improved design is installed; would require these repetitive inspection and replacement requirements on other Piper PA-31 and PA-31P series airplanes not affected by AD 79-01-04; and would require replacing the elevator bungee link with a link of improved design on all airplanes except for the Piper Model PA-31P airplanes, and repetitively replacing the elevator bungee spring on all airplanes. The proposed AD results from reports of cracked elevator bungee springs on airplanes incorporating the older design elevator bungee spring that are not affected by AD 79-01-04, and by reports of cracked elevator bungee springs on airplanes that have improved design elevator bungee springs installed. The actions specified by the proposed AD

are intended to prevent failure of the elevator bungee spring, which could result in a reduction in elevator control and consequent loss of control of the airplane.

DATES: Comments must be received on or before September 22, 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-65-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 New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7348.

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. 90-CE-65-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. 90-CE-65-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 79-01-04, Amendment 39-3381, currently requires repetitively inspecting the elevator bungee spring, Piper part number (P/N) 42377-02, for cracks or surface deformities on certain Piper Aircraft Corporation (known currently as The New Piper Aircraft, Inc.) Model PA-31-350 airplanes, and replacing any elevator bungee spring with cracks or surface deformities. AD 79-01-04 also provides the option of installing an improved design elevator bungee spring, Piper P/N 71056-02, as terminating action for the repetitive inspection requirement of that AD.

Actions Since Issuance of Previous AD

The FAA has received six reports of elevator bungee spring failure on airplanes incorporating elevator bungee spring, Piper P/N 42377-02, that are not affected by AD 79-01-04. In addition, the FAA has received reports of cracking in the Piper P/N 71056-02 elevator bungee spring on Piper Model PA-31-350 airplanes that had this part installed as terminating action for the repetitive inspection requirement of AD 79-01-04, as well as other Piper airplane models that had the improved design elevator spring installed at manufacture. This includes certain Piper Models PA-31, PA-31-300, PA-31-325, PA-31-350, and PA-31P airplanes. These cracks are occurring when the affected airplanes incur over 1,000 hours time-in-service (TIS) on the elevator bungee spring.

Analysis performed by Piper and the FAA reveals that repetitive inspections should not be required on the Piper P/N 71056-02 elevator bungee springs provided they are repetitively replaced

at intervals not to exceed 1,000 hours TIS. The FAA's policy is to not rely on repetitive inspections to detect cracks when an improved design part is available.

In addition, Piper has developed P/N 71056-03 elevator bungee springs that are of almost identical design to the P/N 71056-02 elevator bungee springs.

Relevant Service Information

Piper has revised Service Bulletin No. 626B to the 626C level to include procedures for inspecting elevator bungee springs on Piper PA-31 series airplanes.

In addition, Piper issued Service Bulletin No. 1002, dated June 5, 1997, which includes procedures for replacing the elevator bungee springs on Piper Model PA-31P airplanes.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) repetitive inspections should not be relied on to detect cracks on the Piper P/N 42377-02 elevator bungee springs because improved Piper P/N 71056-02 and P/N 71056-03 elevator bungee springs exist; and (2) AD action should be taken to prevent failure of the elevator bungee spring, which could result in a reduction in elevator control and consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA-31 and PA-31 series airplanes of the same type design, the FAA is proposing an AD to supersede AD 79-01-04. The proposed AD would retain the repetitive inspection and replacement requirements from AD 79-01-04 on Piper Model PA-31-350 airplanes until an elevator bungee spring of improved design is installed; would require these repetitive inspection and replacement requirements on other Piper PA-31 and PA-31P series airplanes not affected by AD 79-01-04; and would require the following:

- Replacing the elevator bungee link with a Piper part number (P/N) 71086-03 (or FAA-approved equivalent part number) elevator bungee link on all Piper PA-31 series airplanes, except for the Piper Model PA-31P airplanes; and
- Repetitively replacing the elevator bungee spring with a Piper P/N 71056-02 (or FAA-approved equivalent part number) or P/N

71056-03 (or FAA-approved equivalent part number) elevator bungee spring.

Accomplishment of the proposed inspections would be in accordance with Piper SB No. 626C, dated February 28, 1997. Accomplishment of the proposed replacements would be in accordance with *Section IV, Surface Controls*, of the applicable maintenance manual for all PA-31 series airplanes, except for the Model PA-31P airplanes. Accomplishment of the proposed replacements for the Model PA-31P airplanes would be in accordance with Piper Service Bulletin No. 1002, dated June 5, 1997.

The affected airplanes could have elevator bungee springs and links 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 elevator bungee springs and links installed.

Differences Between the Proposed AD and Piper Service Bulletins

Piper Service Bulletin No. 626C, dated February 28, 1997, specifies replacing the bungee links every 1,000 flight hours, and specifies repetitive inspections of both the Piper P/N 42377-02 (or FAA-approved equivalent part number) and P/N 71056-02 (or FAA-approved equivalent part number) elevator bungee springs on Piper PA-31 series airplanes, except for Model PA-31P airplanes. The proposed AD would only require a one-time replacement of the elevator bungee link on these airplanes, and would not require repetitive inspections of the Piper P/N 71056-02 (or FAA-approved equivalent part number) elevator bungee spring. The FAA has determined that:

- Based on history and design data, a life limit is not required for the P/N 71086-03 (or FAA-approved equivalent part number) elevator bungee links; and
- Because the Piper P/N 71056-02 (or FAA-approved equivalent part number) and P/N 71056-03 (or FAA-approved equivalent part number) elevator bungee springs have the same structural design, repetitive inspections are only needed on the Piper P/N 42377-02 (or FAA-approved equivalent part number) elevator bungee springs.

In addition, Piper Service Bulletin No. 1002, dated June 5, 1997, specifies

repetitively replacing the P/N 42376-05 elevator bungee link on the Piper Model PA-31P airplanes. The FAA has determined that the P/N 42376-05 elevator bungee link is compatible with the P/N 42377-02 and P/N 71056-03 elevator bungee springs and replacement of the elevator bungee links on Piper Model PA-31P airplanes is not necessary.

Cost Impact

The FAA estimates that 1,325 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed replacement, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$60 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$159,000.

The above figures only take into account the cost of the initial replacement and do not take into account the cost of repetitive replacements. The FAA has no way of determining how many repetitive replacements each owner/operator may incur over the life of an affected airplane. The figure also does not include the cost of the repetitive inspections for the Piper PA-31 and PA-31P series airplanes that would be required until mandatory replacement of the elevator bungee spring. The FAA has no way of determining how many of the affected airplanes would still have the old design elevator bungee spring still installed and would be subject to the proposed repetitive inspections. The FAA believes that most Piper PA-31 and PA-31P series airplane owners/operators have already exceeded 1,000 hours TIS and would replace the elevator bungee spring within 100 hours TIS of the effective date of the AD (if eventually adopted as a final rule) instead of repetitively inspecting the older design elevator bungee spring.

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 14 CFR part 39 of the Federal Aviation Regulations 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) 79-01-04, Amendment 39-3381, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 90-CE-65-AD; Supersedes 79-01-04, Amendment 39-3381.

Applicability: The following airplane model and serial numbers, certificated in any category:

Models	Serial numbers
PA-31, PA-31-300, and PA-31-325.	31-2 through 31-8312019.
PA-31-350	31-5001 through 31-8553002.
PA-31P	31P-1 through 31P-7730012.

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 (g) 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 elevator bungee spring, which could result in a reduction in elevator control and consequent loss of control of the airplane, accomplish the following:

Note 2: The airplanes affected by this AD could have elevator bungee springs and links 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 elevator bungee springs and links installed.

(a) For any affected airplane incorporating a Piper part number (P/N) 42377-02 (or FAA-approved equivalent part number) elevator bungee spring where the elevator bungee spring has 900 hours TIS or less, accomplish the following:

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 79-01-04), and thereafter at intervals not to exceed 100 hours TIS until the replacement required by paragraph (b) of this AD is accomplished, inspect the elevator bungee spring for cracks or surface deformities in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piper Service Bulletin No. 626C, dated February 28, 1997.

Note 3: The 100-hour TIS repetitive inspection compliance time is the same as that in AD 79-01-04 (superseded by this action). This compliance time is being retained to provide credit and continuity for already-accomplished and future inspections.

Note 4: Piper Service Bulletin No. 626C, dated February 28, 1997, lists Piper Models PA-31, PA-31-300, PA-31-325, and PA-31-350 airplanes in the Models Affected section. For purposes of this AD, the inspection procedures included in this service bulletin also apply to the Piper Model PA-31P airplanes.

(2) If any cracks or surface deformities are found during any inspection required by paragraph (a)(1) of this AD, prior to further flight, accomplish the following:

(i) For all affected Models PA-31, PA-31-300, PA-31-325, and PA-31-350 airplanes, replace the elevator bungee link with a Piper P/N 71086-03 (or FAA-approved equivalent part number) elevator bungee link;

(ii) For all the affected airplanes, replace the elevator bungee spring with a Piper P/N 71056-02 (or FAA-approved equivalent part number) or Piper P/N 71056-03 (or FAA-approved equivalent part number) elevator bungee spring. Accomplish this in accordance with *Section IV, Surface Controls*, of the applicable maintenance manual.

(b) Upon accumulating 1,000 hours TIS on a Piper P/N 42377-02, 1056-02, or 71056-03 (or FAA-approved equivalent part number) elevator bungee spring or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) For all affected Models PA-31, PA-31-300, PA-31-325, and

PA-31-350 airplanes, replace the elevator bungee link with a Piper P/N 71086-03 (or FAA-approved equivalent part number) elevator bungee link in accordance with *Section IV, Surface Controls*, of the applicable maintenance manual, unless already accomplished.

(2) For all affected airplanes, replace the elevator bungee spring with a Piper P/N 71056-02 (or FAA-approved equivalent part number) or Piper P/N 71056-03 (or FAA-approved equivalent part number).

(i) For all affected Models PA-31, PA-31-300, PA-31-325, and

PA-31-350 airplanes, accomplish this replacement in accordance with *Section IV, Surface Controls*, of the applicable maintenance manual.

(ii) For the affected Model PA-31P airplanes, accomplish the replacement in accordance with the INSTRUCTIONS section to Piper Service Bulletin No. 1002, dated June 5, 1997.

(c) For all affected airplanes, repetitively replace the elevator bungee spring with a Piper P/N 71056-02 (or FAA-approved equivalent part number) or Piper P/N 71056-03 (or FAA-approved equivalent part number) elevator bungee spring at intervals not to exceed 1,000 hours TIS.

(1) Accomplish the repetitive replacements in accordance with the applicable service information specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(2) If an affected airplane already had the elevator bungee spring and link replaced as specified in paragraphs (b)(1) and (b)(2) of this AD, then only the repetitive replacements of the elevator bungee spring as specified in paragraph (c) of this AD are required.

(d) The repetitive inspections required by paragraph (a) of this AD may be terminated when the replacements specified in paragraphs (a)(2) and (b)(1) and (b)(2) of this AD are accomplished.

(e) As of the effective date of this AD, no person shall install either a Piper P/N 42377-02 (or FAA-approved equivalent part number) elevator bungee spring or a Piper P/N 42376-02 (or FAA-approved equivalent part number) elevator bungee link.

Note 5: The actions specified by this AD are different from those in Piper SB No. 626C, dated February 28, 1997. This AD takes precedence over the service bulletin. Piper SB No. 626C, dated February 28, 1997, specifies replacing the bungee links every 1,000 flight

hours, and specifies repetitive inspections of both the Piper P/N 42377-02 and P/N 71056-02 elevator bungee springs. This AD requires a one-time replacement of the elevator bungee link, and does not require repetitive inspections of the Piper P/N 71056-02 elevator bungee springs.

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

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 79-01-04 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(h) All persons affected by this directive may obtain copies of the documents referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; 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.

(i) This amendment supersedes AD 79-01-04, Amendment 39-3381.

Issued in Kansas City, Missouri, on July 17, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-19437 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-274-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Model DH.125-400A; BH.125-400A and -600A, HS.125-600A and -700A; BAe 125-800A; and Hawker 800 and Hawker 800 XP Series Airplanes Including Military Variants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model DH.125-400A; BH.125-400A and -600A; HS.125-600A and -700A; BAe 125-800A; and Hawker 800, and Hawker 800 XP series airplanes including military variants (C29A, U125, U125A). This proposal would require a one-time inspection to determine if certain high pressure oxygen hose assemblies are installed, and, if installed, replacement of those hose assemblies with new, improved hose assemblies. This proposal is prompted by a report that certain high pressure oxygen hose assemblies are susceptible to leakage due to those hose assemblies not meeting design specifications during manufacturing. The actions specified by the proposed AD are intended to prevent leaks in high pressure oxygen hose assemblies, which, if not detected and corrected, could result in insufficient oxygen available to the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen.

DATES: Comments must be received by September 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-274-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Michael Imbler, Aerospace Engineer, Systems and Propulsion Branch, ACE-115W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4147; fax (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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-274-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-274-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report indicating that certain high pressure oxygen hose assemblies installed on Raytheon Model DH.125-400A; BH.125-400A and -600A; HS.125-600A and -700A; BAe 125-800A; and Hawker 800 and Hawker 800 XP series airplanes including military variants (C29A,

U125, U125A) are susceptible to leakage. The cause of such leakage has been attributed to a discrepant batch of Kidde-Graviner hose assemblies that have a limited in-service life. These hose assemblies, if not removed and replaced in a timely manner, could leak and result in insufficient oxygen quantity available for the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen.

Explanation of Relevant Service Information

Raytheon has issued Service Bulletin SB.35-46, dated September 30, 1996, which describes procedures for a one-time inspection to determine whether any high pressure oxygen hose assemblies having part number WKA 34609 are installed, and replacement of these hose assemblies with new, improved oxygen hose assemblies that meet the design specification.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to determine whether certain oxygen hose assemblies, and replacement of discrepant hose assemblies with new, improved hose assemblies. The inspection and replacement would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 404 Raytheon Model DH.125-400A; BH.125-400A and -600A, HS.125-600A and -700A; BAe 125-800A; and Hawker 800 and Hawker 800 XP series airplanes including military variants of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the initial inspection proposed by this AD on U.S. operators is estimated to be \$24,240, or \$60 per airplane.

Should an operator be required to accomplish the proposed replacement, it would take approximately 1 work hour per airplane to accomplish the proposed replacement, at an average labor rate of \$60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is

estimated to be \$24,240, or \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.):
Docket 96-NM-274-AD.

Applicability: All Model DH.125-400A, BH.125-400A and -600A, HS.125-600A and -700A, and BAe 125-800A series airplanes; and Model Hawker 800 and Hawker 800 XP series airplanes (including Military Variants C29A, U125, and U125A airplanes) having serial numbers 1 through 258294 inclusive; on which Modification 252036 has been installed with a high pressure oxygen hose assembly having part number WKA 34609; certificated in any category.

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

Note 2: Raytheon (Beech) Model DH.125-400B; BH.125-400B and -600B, S. 125-600B and -700B, and BAe 125-800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD, and therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which those models are approved for operation should consider adopting corrective action, applicable to these models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent leaks in high pressure oxygen hose assemblies, which could result in insufficient oxygen quantity available to the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to determine whether any high pressure oxygen hose assembly having a discrepant part number WKA 34609 is installed, in accordance with Raytheon Service Bulletin SB.35-46, dated September 30, 1996. If no discrepant part number is detected, no further action is required by this AD. If any hose assembly having discrepant part number WKA 34609 is installed, prior to further flight, replace the hose assembly with a hose assembly having part number 58179-101 in accordance with the service bulletin.

(b) As of the effective date of this AD, no person may install a high pressure oxygen

hose having part number WKA 34609 on any airplane.

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

(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.

Issued in Renton, Washington, on July 18, 1997.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-19471 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-40-AD]

RIN 2120-AA64

Airworthiness Directives; MAULE Models MX-7-420 and MXT-7-420 Airplanes and Models M-7-235 and M-7-235A Airplanes Modified in Accordance With Maule Supplemental Type Certificate (STC) SA2661SO

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 MAULE Models MX-7-240 and MST-7-420 airplanes, and Models M-7-235 and M-7-235A airplanes that are modified in accordance with Maule STC SA2661SO, which incorporates a certain gas turbine engine, certain amphibious floats, and certain propellers. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is the result of numerous incidents and five

documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received on or before October 3, 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-CD-40-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.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7337; facsimile (404) 305-7348.

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-40-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-40-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight

operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and

- Because MAULE Models MXT-7-420 and MX-7-420 airplanes and Models M-7-235 and M-7-235A airplanes that are modified in accordance with STC SA2661SO are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken.

STC SA2661SO includes the procedures for incorporating the following items on the Maule Models M-7-235 and M-7-235A airplanes.

- An Allison 250-B17C gas turbine engine;
- Edo Model 797-2500 amphibious floats; and
- Hartzell Model HC-B3TF-7A/T10173-11R or HC-B3TF-7A/T10173F-11R propellers.

The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other MAULE Models MXT-7-420 and MX-7-420 airplanes of the same type design and Models M-7-235 and M-735A airplanes of the same type design that are modified in accordance with STC SA2661SO, the FAA is proposing AD action. The proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language.

Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power.

Possible Alternative to the Proposed AD

MAULE is currently in the process of developing AFM revisions for the affected airplanes. If these AFM

revisions are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 3 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to amend the AFM.

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]

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

Maule: Docket No. 97-CE-40-AD.

Applicability: The following airplane models, certificated in any category:

- Models MXT-7-420 and MX-7-420 airplanes, all serial numbers; and
- Models M-7-235 and M-7-235A airplanes, all serial numbers, that are modified in accordance with Maule Supplemental Type Certificate (STC) SA2661SO.

Note 1: Maule STC SA2661SO includes the procedures for incorporating the following items on the Maule Models M-7-235 and M-7-235A airplanes:

- An Allison 250-B17C gas turbine engine;
- Edo Model 797-2500 amphibious floats; and
- Hartzell Model C-B3TF-7A/T10173-11R or HC-B3TF-7A/T10173F-11R propellers.

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 within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers

being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with action 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) Information related to this AD may be examined 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 17, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-19487 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-39-AD]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB-110P1 and EMB-110P2 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power.

DATES: Comments must be received on or before October 3, 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-39-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.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7337; facsimile (404) 305-7348.

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-39-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-39-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle,

Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed; and
- Because EMBRAER Models EMB-110P1 and EMB-110P2 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other EMBRAER Models EMB-110P1 and EMB-110P2 airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may result in increased propeller drag beyond the certificated limits.

Possible Alternative to the Proposed AD

EMBRAER is currently in the process of developing AFM revisions for the affected airplanes. If these AFM revisions are completed and approved by the FAA prior to issuance of the final rule, then incorporating these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 54 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to amend the AFM.

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]

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

Empresa Brasileira de Aeronautica S.A.:
Docket No. 97-CE-39-AD.

Applicability: Models EMB-110P1 and EMB-110P2 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 30 days after the effective date of this AD, unless already accomplished.

To prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may result in

increased propeller drag beyond the certificated limits.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) Information related to this AD may be examined 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 17, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-19486 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-41-AD]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA-31T, PA-31T1, PA-31T2, PA-31T3, PA-42, PA-42-720, and PA-42-1000 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 The New Piper Aircraft, Inc. (Piper) Models PA-31T, PA-31T1, PA-31T2, PA-31T3, PA-42,

PA-42-720, and PA-42-1000 airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received on or before October 3, 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-41-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.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7337; facsimile (404) 305-7348.

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-41-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-41-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are

not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and
- Because Piper Models PA-31T, PA-31T1, PA-31T2, PA-31T3, PA-42, PA-42-720, and PA-42-1000 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA-31T, PA-31T1, PA-31T2, PA-31T3, PA-42, PA-42-720, and PA-42-1000 airplanes of the same type design, the proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power.

Possible Alternative to the Proposed AD

Piper is determining whether it will develop AFM revisions for the affected airplanes. If Piper does develop AFM revisions and they are completed and approved by the FAA prior to issuance of the final rule, then incorporating

these revisions into the AFM will be included as a method of complying with the AD.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of "30 days after the effective date of this AD" would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 607 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately \$60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to amend the AFM.

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—AIR WORTHINESS 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]

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

The New Piper Aircraft, Inc.: Docket No. 97-CE-41-AD. Applicability: Models PA-31T, PA-31T1, PA-31T2, PA-31T3, PA-42, PA-42-720, and PA-42-1000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) Information related to this AD may be examined 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 17, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-19485 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179-0033; FRL-5863-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_x) and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries in the San Francisco Bay Area. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_x in

accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submittals and SIP enforceability guidelines. This rule is being incorporated into the SIP in accordance with the requirements for contingency measures contained in the area's ozone maintenance plan.

DATES: Comments on this proposed action must be received in writing on or before August 25, 1997.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Section (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Lily Wong, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Background

This document addresses EPA's proposed action for Bay Area Air Quality Management District (BAAQMD) Regulation 9, Rule 10, Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries. BAAQMD adopted Regulation 9, Rule 10 on January 5, 1994. The State of California originally submitted the rule being acted on in this document on May

24, 1994. Regulation 9, Rule 10 was found to be complete on July 14, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V¹.

NO_x emissions contribute to the production of ground level ozone and smog. BAAQMD Regulation 9, Rule 10, controls emissions of NO_x from boilers, steam generators, and process heaters in petroleum refineries. The rule was adopted as part of BAAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. The rule was originally submitted in response to the CAA requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) contained in section 182.

However, prior to the complete submittal of the BAAQMD NO_x rules pursuant to the CAA, the district applied for an exemption from the NO_x RACT requirements pursuant to section 182(f)(3). The BAAQMD's exemption request was submitted along with amendments to the BAAQMD's request for redesignation to attainment of the ozone standard. The basis for the BAAQMD's exemption request was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO_x measures. While the BAAQMD had adopted the measures in response to both the State and Federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. The district was able to demonstrate with three years of monitoring data that the Federal ozone standard was reached without having implemented the NO_x control measures. Subsequently, EPA evaluated the exemption request and published an approval for the BAAQMD's petition for a NO_x RACT exemption on May 22, 1995 (60 FR 27028).

While the BAAQMD was no longer required to submit NO_x RACT rules pursuant to section 182(b)(2), the BAAQMD incorporated several of the previously submitted NO_x rules as contingency measures in its ozone maintenance plan as a requirement for redesignation to attainment. Since being redesignated to attainment of the ozone standard,² the Bay Area has recorded violations of the Federal ozone

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

² See 60 FR 27028 (May 22, 1995).

standard, thereby triggering the contingency measures of the maintenance plan. In accordance with the redesignation maintenance plan, and at the request of the BAAQMD, EPA is incorporating the NO_x measures into the SIP. The BAAQMD resubmitted the contingency measures being acted on in this document on July 23, 1996. This action encompasses part of the measures identified in the plan as contingency measures.

EPA Evaluation and Proposed Action

Because BAAQMD Regulation 9, Rule 10 is being incorporated into the SIP as part of the maintenance measures for the area's redesignation plan, the rule is not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rule is being incorporated into the SIP as an attainment maintenance measure for ozone. It is therefore being evaluated against the emissions reductions committed to in the maintenance plan, and SIP enforceability guidelines.

BAAQMD Regulation 9, Rule 10 controls emissions of nitrogen oxides and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries with rated capacities greater than or equal to 1 million Btu per hour heat input. The rule requires sources (excluding carbon monoxide boilers) to meet a facility-wide emission rate of 0.20 pounds NO_x per million Btu heat input limit, and carbon monoxide boilers to meet 300 parts per million by volume (ppmv) of NO_x. The rule requires compliance by May 31, 1995.

Although Regulation 9, Rule 10 will strengthen the SIP, this rule still contains deficiencies related primarily to the lack of enforceability. This rule does not specify any test method for determination of compliance with the NO_x emission limit, and it does not require recordkeeping to demonstrate compliance with the emission rate. A more detailed discussion of the sources controlled, the controls required, and rule deficiencies can be found in the Technical Support Document (TSD), dated May 30, 1997.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3). Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further

air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Regulation 9, Rule 10 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a). At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to meet the requirement for enforceability under section 110(a). If the Administrator disapproves a submission under section 110(k) for an area designated attainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator may, at her discretion, apply one of the sanctions set forth in section 179(b), pursuant to section 110(m). Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the BAAQMD and is currently in effect in the BAAQMD. EPA's final limited disapproval action will not prevent BAAQMD or EPA from enforcing this rule.

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

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 10, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97-19549 Filed 7-23-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 372**

[OPPTS-400113A; FRL-5733-2]

Toxic Chemical Release Reporting; Community Right-To-Know; Additional Time to Report**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Time extensions for submission of reports.

SUMMARY: EPA is announcing that it will allow facilities required to submit Toxic Release Inventory (TRI) reports for calendar year 1996 until September 8, 1997, to file those reports. These TRI reports under section 313 of the Emergency Planning and Community Right-to-Know Act and section 6607 of the Pollution Prevention Act would otherwise be due on or before July 1, 1997. EPA had previously extended the reporting deadline until August 1, 1997; however, EPA has continued to experience delays and errors in the distribution of the reporting package, which includes extensive materials and guidance for preparing TRI reports, for the 1996 reporting. To allow facilities adequate time to prepare and submit complete and accurate TRI reports, especially in electronic format, EPA is allowing facilities extra time in which to report.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, 202-260-9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this notice, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11023 (EPCRA, which is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499)), requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA), 42

U.S.C. 13106. EPCRA section 313 and PPA section 6607 require that covered facilities report this information on or before July 1 of each year for activities at those facilities during the previous calendar year. EPA is required to put the EPCRA section 313/PPA section 6607 information in an electronic data base that is accessible to the public. This data base is commonly referred to as the Toxics Release Inventory (TRI). State and local governments, industry, non-government organizations, and the public make extensive use of this data base.

Each year, prior to the reporting deadline, EPA develops and sends to facilities a reporting package containing the current TRI reporting form (Form R), the alternate threshold reporting form (Form A), the list of toxic chemicals subject to reporting, and instructions for reporting. In recent years, the package has also included computer diskettes containing the automated Form R for electronic reporting. EPA has found that providing this extensive reporting package reduces confusion and the number of reporting errors, and expedites the whole reporting process. In the past, these packages have been distributed by early March of the year in which reports are due to allow adequate time for review and use by the reporting facilities.

II. Additional Time to Report for 1996

For the 1996 reporting year, EPA revised the Form R to collect more specific information on disposal into underground injection wells and landfills. The Office of Management and Budget approved the reporting and recordkeeping requirements related to the revised Form R on April 30, 1997. Because EPA could not print the forms and instructions until the Agency received approval for the Form R, EPA's printing and distribution of the 1996 Form R was not to be initiated until late June 1997. As a result, EPA extended the reporting deadline until August 1, 1997. Because of problems with the distribution of the reporting package, especially the automated Form R, facilities subject to TRI reporting may not have sufficient time to prepare and submit their reports by the extended deadline of August 1, 1997. EPA is concerned that in rushing to report by August 1, facilities may make errors that would reduce the accuracy and utility of the reports and, ultimately, the public data base. EPA is also concerned that the additional delay in the distribution of the automated Form R may result in facilities submitting hard copies of the Form R rather than the preferred electronic version. In addition, EPA

believes that the delay in the distribution of the reporting package may create concern in the regulated community regarding potential enforcement actions, including civil penalties, for those facilities submitting reports that may contain errors as a result of the late distribution of the EPA reporting package or reporting after the extended August 1, 1997 deadline.

In recognition of the importance to State and local governments, industry, and the public that facilities submit complete and accurate TRI reports, EPA is allowing all reporting facilities additional time, until September 8, 1997, to submit their 1996 TRI reports. However, reports for the 1996 reporting year that are filed after September 8, 1997, will be subject to EPA enforcement action, where appropriate. This allowance of additional time for reporting applies only to the EPCRA section 313/PPA section 6607 reporting obligations for TRI reports otherwise due on July 1, 1997, covering calendar year 1996. Nothing in this notice shall be construed to apply to any other EPCRA reporting obligations, or to any TRI reports due for past or future reporting years. Further, this allowance of additional time for reporting applies only to the federal EPCRA section 313/PPA section 6607 reporting obligation; it does not apply to independent obligations under State laws which also require TRI-type reports. However, EPA encourages the States with similar requirements that relate to federal TRI reporting to embrace this allowance of additional time. To the extent that this action might be construed as rulemaking subject to section 553 of the Administrative Procedure Act, for the reasons stated above, EPA has determined that notice and an opportunity for public comment are impracticable and unnecessary. Providing for public comment might further delay reporting, and, because there is no substantive change in the reporting obligation, other than allowing additional time, the public will continue to receive the same information. Moreover, a further delay in reporting would almost certainly mean a delay in the release of the information to the public. Also, public comment would not further inform EPA's decision because the events giving rise to the need to provide extra time for reporting have already occurred. In addition, additional notice and comment procedures in this situation would be contrary to the public interest in timely and accurate reporting of data under EPCRA section 313 and PPA section 6607.

III. Availability of the Form R and Instructions on the Internet

A. The Internet

Notwithstanding the delay in distribution of the printed version, the revised Form R and Instructions, currently are available on the Internet. The Form R and Instructions, which can be downloaded as portable document format (pdf) files, are available at <http://www.epa.gov/opptintr/tri/formr.htm>. The Automated Form R (AFR) and Instructions is also available on the internet. The internet address for the AFR is <http://www.epa.gov/opptintr/afir96>.

B. Fax on Demand

Using a faxphone call 202-401-0527 and select item 5100 for an index of available material and corresponding item numbers related to this document.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: July 18, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97-19544 Filed 7-23-97; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Negotiated Rulemaking Committee on the Shared Risk Exception; Meetings

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Meeting of Negotiated Rulemaking Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document announces the dates and location for the third set of meetings by the Negotiated Rulemaking Committee on the Shared Risk Exception. The purpose of this committee is to negotiate the development of an interim final rule addressing the shared risk exception to the Federal health care programs' anti-kickback provisions, as statutorily-mandated by section 216 of the Health Insurance Portability and Accountability Act of 1996.

DATES: The third series of meetings will be held from 9:00 a.m. to 5:00 p.m. on September 9 and 10, 1997.

ADDRESSES: The 2-day meeting will be held in the OIG Conference Room, Room 5542, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Inquiries regarding this meeting should be addressed to Joel Schaer, OIG Regulations Officer, Office of Counsel to the Inspector General, at the above address or call (202) 619-0089.

SUPPLEMENTARY INFORMATION: The Negotiated Rulemaking Committee on the Shared Risk Exception has been established to provide advice and make recommendations to the Secretary of Health and Human Services with respect to the text and content of an interim final rule that will establish standards relating to the exception to the anti-kickback statute for risk-sharing arrangements, set forth in section 1128B(b)(3)(F) of the Social Security Act. The exception was enacted by section 216 of Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 216 of HIPAA provides that the Secretary will promulgate regulations that establish standards for the exception using an expedited negotiated rulemaking process.

The first series of meetings was held on June 17 and 18, 1997. A second series of meetings is scheduled for July 28 through 30, 1997 (see 62 FR 28410 for times and location of the July meetings).

During the September meetings, the committee will continue to discuss issues relating to the development of the interim final rule and to generate and discuss options for resolving those issues.

The meetings for September 9 and 10, 1997 will be open to the public without advanced registration. Public attendance at the meeting may be limited to space available. Members of the public wishing to attend the meeting may want to notify the contact person listed above in advance to expedite access to the Cohen Building. A summary of all proceedings of these meetings and relevant matters and other material will also be available for public inspection at the address listed above from the hours of 8:30 a.m. to 5:00 p.m., or can be accessed through the OIG web site (<http://www.sba.gov/ignet/internal/hhs/hhs.html>).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: July 14, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97-19500 Filed 7-23-97; 8:45 am]

BILLING CODE 4150-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-159, RM-9122]

Radio Broadcasting Services; Arcadia and Fort Meade, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Hall Communications, Inc., proposing the reallocation of Channel 252C2 from Arcadia, Florida, to Fort Meade, Florida, as that community's first local broadcast service. The coordinates for Channel 252C2 at Fort Meade are 27-41-45 and 81-48-49. We shall propose to modify the license for Station WWRZ, to specify operation on Channel 252C2 at Fort Meade, Florida, in accordance with Section 1.420(i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 8, 1997, and reply comments on or before September 23, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Thomas Schattenfield, Susan A. Marshall, Arent Fox Kintner Plotkin & Kahn, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 97-159, adopted July 9, 1997, and released July 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors,

International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97-19529 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970703165-7165-01; I.D. 062397A]

RIN 0648-AK00

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Power Plant Operations

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

ACTION: Notice of receipt of a petition for regulations and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received an application for a small take exemption and implementing regulations from North Atlantic Energy Service Corporation for a small take of marine mammals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH. As a result of that application, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to promulgate these regulations, NMFS must determine that these takings will

have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the structure and content of regulations if the application is accepted.

DATES: Comments and information must be postmarked no later than August 25, 1997.

ADDRESSES: Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application may be obtained by writing to the above address, or by telephoning one of the persons below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713-2055 or Eric Hutchins (508) 281-9313.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Application

On June 16, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the North Atlantic Energy Service Corporation (North Atlantic) to take marine mammals incidental to routine operations of its Seabrook Station nuclear power plant. Seabrook Station is a single-unit 1,150-megawatt nuclear power generating facility located in Seabrook, NH. Cooling water for plant operations is supplied by three intake structures approximately one mile offshore in 60 ft of water. About 469,000 gallons per minute are drawn through the intakes to a 19-ft diameter, 3 mile long tunnel beneath the seafloor and into large holding bays (called forebays) at the power plant. Lethal takes of seals are

known to have occurred and are expected to continue to occur as the animals enter the cooling water intake structures and apparently drown en route to the forebays.

Each of the three seawater intakes structures consists of a velocity intake cap that is connected to the subterranean intake tunnel by vertical risers. The velocity intake caps are 30 ft in diameter and rest, mushroom-like, on top of the 9-ft diameter risers. The bottom of each cap is 10 ft above the seafloor, and water enters the cap through 7-ft tall openings around its perimeter. The purpose of this design is to minimize the rate of water flow at the mouth of the intakes and thereby minimize entrainment of marine organisms. The rate of water flow at the edge of velocity intake caps during full power is about 0.5 ft per second (0.3 knots).

Because the structures are offshore and submerged, seals have not been observed entering the intakes but are discovered in the forebays. The horizontal flow rate at the intakes is not believed to be strong enough to sweep seals into the intakes. The animals probably swim into the structures, perhaps in pursuit of prey. Once inside the velocity cap, the rate of water flow increases in the risers and intake tunnel. The accelerating, downward-turning flow, and the absence of light may disorient the seals and may inhibit their escape from the intakes. For an object traveling passively with the flow, the minimum transit time from the intake structures to the forebay is approximately 80 minutes. A seal that enters the intakes and is unable to find its way out would not be able to survive the transit through the intake tunnel to the plant.

Since 1993, the remains of 27 to 33 seals have been discovered in Seabrook Station's forebays or on the device used to clean the forebays' condenser intake screens. Eighteen of the animals have been removed intact from the forebays, either manually or through screen washings. Human access to the forebays is restricted and visibility is poor. Consequently, intact animals occasionally go undetected in the forebays and pieces of hide and bones are recovered in the screen washings as the animals deteriorate, thus the uncertainty in the tally of animals taken to date. The remains are turned over to the authorized members of the Northeast Marine Mammal Stranding Network for analysis and disposal. Skull fragments from two harp seals and one hooded seal have been identified amongst the remains. Twenty of the seals have been identified as harbor

seals, including all 18 of the animals that have been recovered intact. Of the 12 whose ages have been determined, 10 were young-of-the-year harbor seals, divided equally between males and females.

North Atlantic is presently investigating a number of measures to prevent the lethal taking of seals at Seabrook Station. To date, no preventive measures have been implemented, but certain alternatives hold promise. These alternatives are being reviewed for their practicability with regard to nuclear power safety, costs, and their ability to withstand the high energy offshore environment. North Atlantic's application for a small take exemption authorization will be updated as determinations regarding preventive measures are made.

Though Seabrook Station has been in commercial operation since August 1990, no seals takes are known to have occurred prior to 1993, when the remains of two seals were discovered. In 1994, the remains of seven seals were found, and 1995, the remains of six or seven were found. In 1996, ten intact harbor seals and the bone fragments of two to seven additional seals were recovered. Given that the local abundance of harbor seals and harp seals is known to be increasing and given that plant operations are scheduled to continue, as yet, unmodified; takes are likely to continue to occur in coming years. The expected number of takes per year cannot be estimated at this point but the order of magnitude might be suggested by the findings of 1996, 12 to 17 animals, mostly harbor seals.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the application for a small take exemption and the structure and content of regulations if the application is accepted. NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment.

Dated: July 18, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 97-19461 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 62, No. 142

Thursday, July 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 18, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-6204 or (202) 720-6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

- Agricultural Marketing Service
Title: Almonds Grown in California—Marketing Order 981.
OMB Control Number: 0581-0071.
Summary of Collection: Information is collected from growers and handlers for referendums, marketing agreements, and disposition of almonds sold in California.

Need and Use of the Information: The information is used to administer Marketing Order No. 981.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 7,658.

Frequency of Responses:

Recordkeeping; Reporting: On occasion; Monthly; Semi Monthly.

Total Burden Hours: 2,512.

- Foreign Agricultural Service
Title: Administering the Dairy Import Licensing System.

OMB Control Number: 0551-0001.

Summary of Collection: These forms will be used in applying for import licenses for certain dairy products subject to tariff-rate quotas and issued in accordance with the final rule governing the administration of the import licensing system.

Need and Use of the Information: The information is needed to assure that the intent of the legislation is being correctly administered.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 440.

Frequency of Responses:

Recordkeeping; Reporting: Annually.

Total Burden Hours: 270.

- Rural Business-Cooperative Service
Title: 7 CFR 4285-A, Federal-State Research on Cooperatives Program.

OMB Control Number: 0570-0005.

Summary of Collection: Respondents complete applications, statements of work, supplemental agreements and progress reports.

Need and Use of the Information: Information to be collected is necessary to determine adequate need before a Federal Cooperative Agreement is made to conduct research.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 20.

Frequency of Responses:

Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,238.

- Rural Business-Cooperative Service
Title: Annual Survey of Cooperative Involvement in International Markets.
OMB Control Number: 0570-New.
Summary of Collection: Cooperative international trade data.
Need and Use of the Information: Assist U.S. farmer cooperatives to expand their participation in international trade of agricultural products and supplies and to review their progress.

Description of Respondents: Business or other for-profit.

Number of Respondents: 170.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 170.

- Farm Service Agency
Title: Payer's Request for Identifying Number.

OMB Control Number: 0560-0121.

Summary of Collection: County FSA offices prepares CCC-343 to collect an identification number which consists of social security, employer identification, or IRS assigned number from each producer who has not furnished a number.

Need and Use of the Information: The identifying number is used by the Internal Revenue Service to permit proper identification and to permit processing of tax returns.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: When necessary.

Total Burden Hours: 250.

- **Animal and Plant Health Inspection Service**

Title: Importation of Fruits and Vegetables.

OMB Control Number: 0579-New.

Summary of Collection: Collect phytosanitary inspection certificates and fruit fly monitoring records.

Need and Use of the Information: Needed to prevent the importation of pests into the United States. Also to allow the importation of fruits and vegetables that were previously prohibited.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 50.
Frequency of Responses:
 Recordkeeping: Reporting: On occasion.
Total Burden Hours: 656.

• **National Agricultural Statistic Service**

Title: Honey Survey.
OMB Control Number: 0535-0153.
Summary of Collection: Respondents provide information on honey production, number of colonies, production, and stocks.

Need and Use of the Information: Estimates of the information are used by producers and the agribusiness sector of the honey industry to make production and marketing decisions.

Description of Respondents: Farms.
Number of Respondents: 6,200.
Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,067.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97-19517 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-001-1]

Handling, Training, and Exhibition of Potentially Dangerous Exotic or Wild Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for information.

SUMMARY: Through this document, the Animal and Plant Health Inspection Service is requesting information concerning what practices are currently used for handling and training potentially dangerous exotic or wild animals used in exhibition (such as, but not limited to, elephants, lions, or tigers), and what training and experience levels trainers and handlers of such animals have. We are seeking this information to help us more thoroughly examine all issues pertaining to the training and handling of potentially dangerous exotic or wild animals used in exhibition.

DATES: Consideration will be given only to comments received on or before September 22, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-001-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Please state that your comments refer to Docket No. 97-001-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. 9 CFR part 2 contains regulations that cover training and handling of animals under the Animal Welfare Act. These regulations generally prohibit physical abuse of performing animals, describe minimum standards for exhibition of animals to prevent risk or harm to the animals and to the public, and require that dangerous animals be directly supervised by a knowledgeable animal handler during public exhibition.

We are seeking additional information concerning the training and handling of potentially dangerous wild and exotic animals used in exhibition in order to obtain a better understanding of the issues pertaining to their welfare. Specifically, we are seeking information that will help us explore the following issues:

1. What handling and training practices are used, both by the majority of the performing animal industry and by other groups, and what practices are considered abusive;
2. What practices are used for controlling potentially dangerous animals that show aggression during exhibition, such as standards for chemical immobilization and recapture of aggressive animals, and what practices are used for preventing animals from being aggressive during exhibition;
3. What is the incidence of aggressive behavior in these animals during exhibition;

4. What identification methods are used for tracking wild or exotic animals (such as tattoos or microchips); and

5. What professional or industry standards exist concerning training and experience levels for trainers and handlers.

We are most interested in receiving information that is in the form of published industry standards, published reports in peer-reviewed journals, studies, and objective scientific data. For those issues on which data or published information is not available, APHIS also requests comments on the most cost-effective means to obtain such data. Interested parties are invited to submit comments on the issues stated above and other pertinent issues related to the training and handling of potentially dangerous wild or exotic animals. Written comments should be submitted within the 60-day comment period specified in this notice under the section entitled **DATES** to the address listed under the section entitled **ADDRESSES**.

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 18th day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-19498 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Luck Lake Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Ketchikan Area timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest an estimated 13 million board feet (mmbf) of timber on an estimated 1000 acres. A range of alternatives will be developed and will include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Management Area K09 Value Comparison Units 572, 581 and 582 on Prince of Wales Island, Alaska, on the Thorne Bay Ranger

District of the Ketchikan Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by September 30, 1997.

ADDRESSES: Please send written comments to District Ranger; Thorne Bay Ranger District; Tongass National Forest, Ketchikan Area; Attn: Luck Lake EIS; P.O. Box 19001; Thorne Bay, AK 99919.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposal and EIS should be directed to Stephen J. Kimball, District Ranger, Thorne Bay Ranger District, Tongass National Forest, P.O. Box 19001, Thorne Bay, AK 99919 telephone (907) 828-3304.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Thorne Bay, August 25, 1997, Whole Passage, August 26, 1997, Coffman Cove, August 27, 1997, Naukati, August 28, 1997 and Klawock, September 3, 1997. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by September 30, 1997. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to:

Subsistence resources, old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife and plant species, timber supply, scenery and recreational resources, anadromous and resident fish habitat, water resources, wetlands, cultural resources and others.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in March 1998. Subsistence hearings, as

provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during the comment period on the Draft EIS. The Final EIS is anticipated by September 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978).

Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Agoon v. Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Comments submitted anonymously will

be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corp of Engineers
 - Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
 - Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
 - National Pollutant Discharge Elimination System (402) Permit;
 - Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
 - Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
 - Solid Waste Disposal Permit;
 - Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Bradley E. Powell, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: July 17, 1997.

Robert L. Vaught,

Deputy Forest Supervisor.

[FR Doc. 97-19469 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Staney Environmental Impact Statement**

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Ketchikan Area timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest an estimated 35 million board feet (mmbf) of timber on an estimated 1600 acres. A range of alternatives will be developed and will include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Management Area K07 Value Comparison Units 571m 587, 588, 590 and part of 577 on Prince of Wales Island, Alaska, on the Thorne Bay Ranger District of the Ketchikan Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by September 30, 1997.

ADDRESSES: Please send written comments to District Ranger; Thorne Bay Ranger District; Tongass National Forest, Ketchikan Area; Attn: Staney EIS; P.O. Box 19001; Thorne Bay, AK 99919.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Stephen J. Kimball, District Ranger, Thorne Bay Ranger District, Tongass National Forest, P.O. Box 19001, Thorne Bay, AK 99919 telephone (907) 828-3304.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of significant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Thorne Bay, August 25, 1997, Whale Passage, August 26, 1997, Coffman Cove, August 27, 1997,

Naukati, August 28, 1997 and Klawock, September 3, 1997. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by September 30, 1997. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Subsistence resources, old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife and plant species, timber supply, scenery and recreational resources, anadromous and resident fish habitat, water resources, wetlands, cultural resources and others.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in March 1998. Subsistence hearings, as provided for in title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during the comment period on the Draft EIS. The Final EIS is anticipated by September 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F. 2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in

the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comment during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corp or Engineers
 - Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
 - Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
 - National Pollutant Discharge Elimination System (402) Permit;
 - Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit;

—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Bradley E. Powell, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: July 17, 1997.

Robert L. Vaught,

Deputy Forest Supervisor.

[FR Doc. 97-19470 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on August 27, 1997 at the Welcome Center on Highway 97 in Bend, OR. The meeting will start at 9:00 a.m. and finish at 5:00 p.m. Agenda items include: (1) Completion of comments on the DEIS documents for the Eastside Ecosystem project and (2) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Pam Beyer, Province Liaison, USDA, Bend-Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 541-383-4705.

Dated: July 15, 1997.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 97-19424 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Water Rights Task Force Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Forest Service announces meetings of the Water Rights Task Force established on August 20, 1996, in accordance with the provisions of the Federal Agricultural Improvement and Reform Act of 1996, as amended. The chairman has changed the location of the previous scheduled August 4-5, 1997, meeting of the Task Force to Boise, Idaho, and has scheduled a new meeting August 18, 1997, in Denver, Colorado.

DATES: The meetings will be held August 4, from 9:30 a.m. to 5:30 p.m.; August 5, from 8:30 a.m. until adjourned by the chairman; and August 18, from 8:00 a.m. until adjourned by the chairman.

ADDRESSES: The August 4-5 meeting will be held in Boise at the Red Lion/Doubletree Riverside Hotel, Delamar Conference Room, 2900 Chinden Blvd. The August 18 meeting will be held at the United Airlines Red Carpet Club Conference Room at the Denver International Airport.

Send written comments to Eleanor Towns, FACA Liaison, Water Rights Task Force, c/o USDA Forest Service, MAIL STOP 1124, P.O. Box 96090, Washington, DC 20090-6090. Telephone: (202) 205-1248; Fax: (202) 205-1604.

FOR FURTHER INFORMATION CONTACT:

Stephen Glasser, Watershed & Air Management Staff, Telephone: (202) 205-1172; Fax: (202) 205-1096.

SUPPLEMENTARY INFORMATION: The Water Rights Task Force is composed of seven members appointed by Congress and the Secretary of Agriculture to study and make recommendations on issues pertaining to water rights. All meetings are open to the public and time for the public to address the Task Force is scheduled on August 4 from 10:00 a.m. to 2:00 p.m. Discussion is limited only to Task Force members and Forest Service personnel. Persons who wish to bring water rights matters to the attention of the Task Force may file written statements, either before or after these meetings, with the Forest Service liaison at the address listed earlier in this notice.

Dated: July 17, 1997.

Robert C. Joslin,

Deputy Chief, NFS.

[FR Doc. 97-19504 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
AR-172 Lafayette County livestock Auction, South Lewisville, Arkansas.	Apr. 26, 1997.
OH-152 Rushcreek Stable & Auction, Bremen, Ohio.	May 30, 1997.
WI-146 Bloomington Livestock Exchange, Bloomington, Wisconsin.	Apr. 25, 1997.

Done at Washington, D.C. this 16th day of July 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97-19434 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AL-191 M & N Horse Sale, Russellville, Alabama

AR-173 Centerton Livestock Auction,
Centerton, Arkansas
KY-175 Kentucky Livestock Exchange,
Owenton, Kentucky
MS-170 Alcorn County Stockyard, Corinth,
Mississippi
NC-172 Martin County Horse Auction, Oak
City, North Carolina
PA-159 Troy Sales, Troy, Pennsylvania

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408—South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by August 8, 1997.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 17th day of July 1997.

Daniel L. Van Ackeren,

*Director, Livestock Marketing Division,
Packers and Stockyards Programs.*

[FR Doc. 97-19425 Filed 7-23-97; 8:45 am]

BILLING CODE 3410-EN-P

ARCTIC RESEARCH COMMISSION

Notice is Hereby Given That the U.S. Arctic Research Commission Will Hold its 48th Meeting in Barrow, AK on August 8 and 9, 1997

July 16, 1997.

The Business Session open to the public will convene at 9:00 a.m. Friday, August 8, in the Barrow City Council Chambers Agenda items include:

- (1) Call to order and approval of the Agenda.
- (2) Approval of the Minutes of the 47th Meeting.
- (3) Reports of Congressional Liaisons.
- (4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include an Overview of North Slope Borough Wildlife Research, Global Change Research at Barrow, Eastern Russia Research Taxes, Research on Traditional Use of Plants and the ARM program.

The Business Session will reconvene at 9:00 a.m. Saturday, August 9. An

Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703-525-0111 or TDD 703-306-0090.

Garrett W. Brass,
Executive Director.

[FR Doc. 97-19474 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut 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 planning subcommittee of the Connecticut Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Monday, August 25, 1997, at the Catholic Charities, Conference Room, 467 Bloomfield Avenue, Bloomfield, Connecticut 06002. The purpose of the meeting is to discuss and plan details of the forthcoming civil rights leadership conference to be held late 1997.

Persons desiring additional information, or planning a presentation to the Committee, should contact Subcommittee Chairperson Patrick J. Johnson, Jr., 860-242-9577, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). 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 17, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97-19509 Filed 7-23-97; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont 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 Vermont Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 4:30 p.m. on Thursday, August 28, 1997, at the Burlington City Hall, Conference Room #2, 149 Church Street, Burlington, Vermont 05401. The purpose of the meeting is to continue project planning for the Committee's November community forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly Cheney, 802-229-0334, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). 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 17, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97-19511 Filed 7-23-97; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts 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 Massachusetts Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on Friday, August 22, 1997, at the Western New England School of Law, The Moot Court Room, 1215 Wilbraham Road, Springfield, Massachusetts 01119. The purpose of the meeting is to discuss and plan details of the forthcoming civil rights leadership conference to be held late 1997.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Fletcher A. Blanchard, 860-585-3909, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). 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 17, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97-19510 Filed 7-23-97; 8:45 am]

BILLING CODE 6335-01-P

10236, New Executive Office Building, Washington, D.C. 20503.

Dated: July 18, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97-19442 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-13-P

such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Tex-Co's conviction for violating IEEPA and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Tex-Co permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of its conviction. The 10-year period ends on June 24, 2006. I have also decided to revoke all licenses issued pursuant to the Act in which Tex-Co had an interest at the time of its conviction.

Accordingly, it is hereby *Ordered* I. Until June 24, 2006, Tex-Co International, Inc., 8989 Westheimer Road, Suite 216, Houston, Texas 77063, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Malcolm Baldrige National Quality Award Application.

Agency Form Number: None assigned.

OMB Approval Number: 0693-0006.

Type of Request: Reinstatement of a previously approved collection.

Burden: 10,000 hours.

Avg Hours Per Response: 100.

Number of Respondents: 100.

Needs and Uses: The Malcolm Baldrige National Quality Improvement Act of 1987 established an annual quality award either presented by the President or the Secretary of Commerce. Applications for the Malcolm Baldrige National Quality Award submit an eligibility application, and if declared eligible, an application package. NIST uses the information provided to assess and make selections for this Award.

Affected Public: Businesses or other for-profit organizations and not-for-profit institutions.

Frequency: Award applications are accepted on an annual basis.

Respondent's Obligation: The voluntary application must be submitted in order to be considered for the Award.

OMB Desk Officer: Virginia Huth, (202) 395-6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Virginia Huth, OMB Desk Officer, Room

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Tex-Co International, Inc.; Order Denying Permission to Apply for or Use Export Licenses

On June 24, 1996, Tex-Co International, Inc. (Tex-Co) was convicted in the United States District Court for the Southern District of Texas, Houston Division, of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)) (IEEPA). Tex-Co was convicted of knowingly and willfully exporting, and causing to be exported, various items of oil field equipment to an intermediary for ultimate delivery to Umm Al-Jawaby Oil Service Company, Ltd., a specially designated national of the government of Libya, located in London, United Kingdom, without the written authorization of the United States Government.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act),¹ provides that, at the discretion of the Secretary of Commerce,² no person convicted of violating IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 comp. 298 (1997)), continued the Export Administration Regulations in effect under the IEEPA.

² Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Tex-Co by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 24, 2006.

VI. A copy of this Order shall be delivered to Tex-Co. This Order shall be published in the **Federal Register**.

Dated: July 15, 1997.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 97-19515 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held September 4, 1997, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M-2, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Preview of Wassenaar List format.
4. Review of "white paper" on machine tools.
5. Review of Nuclear Suppliers Group activities.
6. Discussion on post-shipment visit procedures.
7. Discussion on definition of "specially designed".

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at 202-482-2583.

Dated: July 18, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97-19441 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 60-97]

Foreign-Trade Zone 124—Gramercy, LA; Application for Subzone Status, Halter Marine, Inc. (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting special-purpose subzone status for the shipbuilding facility of Halter Marine, Inc. (HMI), located in Lockport, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 16, 1997.

The HMI shipyard (133 acres, 270 employees) is located on State Highway 308, north of the City of Lockport (LaFourche Parish), Louisiana, and is used in the construction, repair, and conversion of commercial and military vessels for domestic and international customers. Foreign components used at the HMI shipyard (up to 20% of total) include propulsion units, main engines, casting plates, bow thrusters, and pilot chairs (1997 duty rate range: free-10%, *ad valorem*).

FTZ procedures would exempt HMI from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products, which requires that full duties be paid on such items. Foreign-sourced steel mill products, such as pipe and plate, would be subject to the full Customs duties applicable to those items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 22, 1997. Rebuttal

comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 7, 1997).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 490, 110 North Airline Avenue, Gramercy, LA 70052
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 17, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-19551 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-812]

Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 18, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order and notice of intent not to revoke, in part, the antidumping duty order on dynamic random access memory semiconductors (DRAMs) of one megabyte or above from the Republic of Korea (61 FR 36029). The review covers exports of the subject merchandise to the United States by LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.) and Hyundai Electronics Industries, Inc. (Hyundai). The period of review (POR) is May 1, 1995 through April 30, 1996. This is the third review period.

As a result of our analysis of the comments received, the antidumping margins have changed from those presented in our preliminary results.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230, telephone: (202) 482-3814.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from the Republic of Korea. On May 8, 1996, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period May 1, 1995, through April 30, 1996 (61 FR 20791). In accordance with 19 CFR 353.22(a)(2), in May 1996, LGS and Hyundai (collectively the respondents) requested that the Department conduct an administrative review of their shipments of DRAMs to the United States during this period. In addition, both respondents requested that the Department revoke the antidumping order, in part, pursuant to section 353.25(a)(2) of the Department's regulations. We also received a request from the petitioner, Micron Technologies Inc., that an administrative review of these same two Korean manufacturers of DRAMs be conducted. On June 25, 1996, the Department published a notice of initiation of administrative review (61 FR 32771). Based upon the fact that we disregarded sales found to have been made below the cost of production (COP) in the original less-than-fair-value (LTFV) investigation, which was the most recent period for which final results were available when this review was initiated, on the same date we automatically initiated an investigation to determine whether Hyundai and LGS made sales of subject merchandise below the COP during the POR.

On March 18, 1997, the Department published a notice of preliminary results of administrative review and intent not to revoke the order on DRAMs of one megabyte or above from the Republic of Korea (62 FR 12794). Case and rebuttal briefs were submitted on April 18, 1997, and April 29, 1997, respectively, by the petitioner, both respondents and the following interested parties: (1) Compaq Computer

Corporation (Compaq); (2) Digital Equipment Corporation (Digital), and (3) Dell Computer Corporation (Dell). At the request of LGS and Hyundai, a public hearing was held on May 5, 1997. The Department has now completed its administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabyte and above from the Republic of Korea (Korea). Included in the scope are assembled and unassembled DRAMs of one megabyte and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the

HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

Intent Not To Revoke in Part

Section 751(d)(1) of the Act provides that the Department "may revoke" an antidumping order, in whole or in part, after conducting an appropriate review. 19 U.S.C. 1675(d)(1) (1995). The Department's regulations elaborate upon this standard. Section 353.25(a)(2) provides that the Department may revoke an order, in part, if the Secretary concludes: (1) "One or more producers or resellers covered by the order have sold the merchandise at not less than foreign market value for a period of at least three consecutive years;" (2) "it is not likely that those persons will in the future sell the merchandise at less than foreign market value;" and (3) * * * "the producers or resellers agree in writing to their immediate reinstatement in the order as long as any producer or reseller is subject to the order, if the Secretary concludes under section 353.22(f) that the producer or reseller, subsequent to the revocation, sold the merchandise at less than foreign market value."

As noted above, this administrative review is being conducted pursuant to the Tariff Act, as amended by the URAA. The URAA revised certain terminology in the Act, including substituting the term "normal value" for "foreign market value" and "exporter" for "reseller." However, because this review was initiated prior to the date the revised regulations became final, the 1996 regulations are still applicable. These regulations use the previous terminology. We note that the new regulations do not alter the substantive requirements for revocation. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27399 (May 19, 1997) (section 351.222(b)(2)).

In this case, the first and third criteria for revocation have been met. The Department found that LGS and Hyundai did not sell at less than foreign market value in the first and second reviews under this order. Also, in this administrative review, the respondents were found not to have made sales at less than normal value. Further, both respondents have certified to their immediate reinstatement in the order pursuant to the third criterion noted above. Accordingly, the key question is whether the Department is satisfied that it is "not likely" the respondents will sell at prices below normal value in the future.

In evaluating the "not likely" issue in numerous cases, Commerce has considered three years of no dumping margins, plus a respondent's certification that it will not dump in the future, plus its agreeing to immediate reinstatement in the order all to be indicative of expected future behavior. In such instances, this was the only information contained in the record regarding the likelihood issue. See, e.g., Fresh Cut Flowers from Mexico, 61 FR 63822, 63825 (December 2, 1996); Polyethylene Terephthalate Film from Korea, 61 FR 58374, 58376 (November 14, 1996); Tapered Roller Bearings and Parts Thereof from Japan, 61 FR 57629, 57651 (November 7, 1996).

In other cases, when additional evidence is on the record concerning the likelihood of future dumping, Commerce is, of course, obligated to consider that evidence. In this regard, in evaluating such record evidence to determine whether future dumping is not likely, the Department has a longstanding practice of examining all relevant economic factors and other information on the record in a particular case. In particular, depending upon the facts of a case, we consider such "factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without [sales at less than normal value]." Brass Sheet and Strip from Germany, 61 FR 49727, 49730 (September 23, 1996) (Brass Sheet and Strip); accord Frozen Concentrated Orange Juice from Brazil, 56 FR 52510, 52511 (October 21, 1991) (FCOJ); and Titanium Sponge from Japan, 53 FR 26099, 26100 (July 11, 1988) (Titanium Sponge).

In summary, the Department engages in an impartial, balanced analysis of all of the information on the record. Pursuant to the Department's regulations, the Department cannot revoke this order unless it concludes that it is not likely that the respondents will dump in the future. As we fully explain below, the Department is not satisfied, based on the evidence on the record, that the not likely standard has been made.

Prior to issuing the preliminary results in this administrative review, the Department, at the request of the parties, established a procedure for the submission of factual information regarding revocation. The petitioner and both respondents made several submissions of information relevant to whether future dumping is not likely, including various in-depth economic analyses. Accordingly, at the time of its

preliminary results, the Department had an extensive factual record before it.

Based on an analysis of that record, the Department preliminarily determined that the likelihood criterion for revocation had not been met. Therefore, on March 18, 1997, the Department published a notice of intent not to revoke the order concerning DRAMs from Korea (62 FR 12794) with respect to LGS and Hyundai. Thereafter, the Department received a number of comments on the Department's preliminary results from the petitioner, LGS, Hyundai, Compaq, Digital and Dell in the case and rebuttal briefs. The case and/or rebuttal briefs of the petitioner, LGS, Hyundai and Compaq contained additional factual information, which the Department had previously requested. The data presented in these briefs was therefore taken into consideration in the Department's final analysis, as well as publicly available data regarding current market conditions.

The DRAM industry is highly cyclical in nature with periods of sharp upturn and downturn in market prices. In the past, the DRAM industry has been characterized by dumping during periods of significant downturn. For instance, various foreign producers were found to have dumped during the downturn in the mid-1980s (see Dynamic Random Access Memory Devices from Japan, 51 FR 15943 (April 29, 1986)), and the Korean respondents in this proceeding were found to have dumped in the less than fair value investigation during 1991-1992, the last period when there was a significant downturn in the DRAM industry. Because DRAMs are a commodity product, DRAM producers/resellers must price aggressively during a downturn period in order to stay competitive and maintain their customer base. This is especially true during the lowest point in the downturn. Therefore, it is reasonable to conclude that information regarding the selling activities and pricing practices of respondents, as well as other market conditions, during periods of significant downturn are relevant to whether dumping is not likely to occur in the future. Thus, as discussed further in comment 3, below, we found the January through December 1996 time period to be particularly relevant to the "not likely" issue because it corresponded with a significant "downturn" in the DRAM industry.

In its April 18, 1997, case brief, Compaq proposed that the respondents participate in a DRAM data collection program. In its proposal, Compaq presumed that the antidumping order

would be revoked, and that under such a program, respondents would agree to maintain cost and pricing data which the respondents would submit to the Department should an antidumping petition be filed in the future. On June 17, 1997, the Government of Korea submitted a similar proposal. On the same date, the respondents stated their willingness to participate in such a program, and argued that this proposal should be taken into consideration in the Department's likelihood determination in this proceeding. The petitioner submitted its opposition to any such data collection program on June 14, 1997, and July 3, 1997.

Other than Compaq's April 18, 1997, submission, all submissions regarding the proposed data collection program were received late in the proceeding, after the deadline for submitting new information. We note further that the proposal itself is precatory in nature. No such data collection program is currently in place. Therefore, while we have considered this proposed data collection program, we find that this program has no bearing on the likelihood issue.

As discussed further in comment 4, below, based on our analysis of the DRAM industry generally and, in particular, during the 1996 time frame, we find that the likelihood standard has not been met. Therefore, we have not revoked the antidumping duty order on DRAMs from Korea with respect to LGS and Hyundai.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. As noted above, we received timely comments from the petitioner, LGS, Hyundai, Compaq, Digital and Dell.

I. Revocation Comments

Comment 1: Whether the Department Erred when it Issued a Preliminary Intent Not to Revoke the Order In Part.

Hyundai and Compaq argue that the Department's failure to publish a notice of "Intent to Revoke Order (In Part)" with its preliminary results is contrary to case precedent. Both parties contend that, barring extremely unusual circumstances not present in this proceeding, it is the Department's practice to revoke orders whenever a respondent has established three consecutive years of no dumping and has furnished a written statement agreeing to the immediate reinstatement of the order in the event the Secretary concludes that the respondent sells at less than normal value in the future. Hyundai and Compaq cite numerous

cases where the Department has granted revocation, including Steel Wire Rope from the Republic of Korea, 62 FR 17171 (April 9, 1997) (Steel Wire Rope); Certain Forged Steel Crankshafts from the United Kingdom, 62 FR 16768, 16771 (April 8, 1997) (*Crankshafts*); and Fresh Cut Flowers from Mexico, 61 FR 63825 (December 2, 1996).

Hyundai further claims that the Department's failure to issue a preliminary intent to revoke the order, in part, despite three consecutive years of *de minimis* margins, is in conflict with the intent of Article 11 of the WTO Antidumping Agreement, which states that an antidumping duty order "shall remain in force only as long and to the extent necessary to counteract the dumping which is causing injury," and that an order must be terminated "immediately" if the authorities determine that the order is no longer warranted.

Finally, Hyundai argues that the Department's reliance on Brass Sheet and Strip as case precedent for its preliminary finding regarding the "not likely" issue was misplaced. Specifically, Hyundai asserts that the facts in Brass Sheet and Strip differ from the facts in this proceeding in the following ways: (1) In contrast to Brass Sheet and Strip where the respondent's exports had fallen to commercially insignificant levels, Hyundai's shipments of DRAMs have increased substantially since the order was put in place; (2) unlike the respondent in Brass Sheet and Strip, the ability of the Korean respondents to sell at fair value in the United States has not been impaired by a strengthening currency; (3) in contrast to Brass Sheet and Strip where the respondent was planning to use the imported product as an input for a plant located in the United States (making increased imports of the subject merchandise in the future almost certain), Hyundai will not use the subject merchandise as an input product; and (4) in contrast to Brass Sheet and Strip where the worldwide demand for the product was declining, the worldwide demand for DRAMs is strong and is predicted to increase in the future.

The petitioner argues that the Department's preliminary determination not to revoke was correct and in accordance with the law. The petitioner claims that section 353.25(a)(2) of the Department's regulations specify that before an antidumping duty order can be revoked, the Department must be satisfied that future dumping by the respondents is not likely. Therefore, the petitioner contends that although three consecutive years of *de minimis* margins

and the respondents' certification regarding the immediate reinstatement of the order if dumping resumes are requirements for revocation, these factors alone are not a sufficient basis for revocation. The petitioner claims that because the Department's preliminary results found no basis to conclude that it is not likely that the Korean respondents will resume dumping in the future, the Department had a "reasonable basis" to believe that the requirements for revocation had not been met. Therefore, the petitioner asserts that the order continues to be warranted in order to counteract injurious dumping. Accordingly, the petitioner contends that the Department's preliminary decision not to revoke the order in part was in compliance with the law and the international obligations of the United States under Article 11 of the WTO Antidumping Agreement.

The petitioner further argues that although the cases differ with regard to certain facts, the Department's reliance on Brass Sheet and Strip was not misplaced. The petitioner contends that the factors identified by Hyundai do not diminish the relevance of Brass Sheet and Strip as important case precedent on the issue of revocation. In particular, the petitioner contends that factual similarities between this proceeding and Brass Sheet and Strip, such as the relationship between global oversupply and declining prices and the relative size of the U.S. market, are more probative than the differences cited by Hyundai.

DOC Position

We disagree with respondents' interpretation both of the proper revocation standard and the Department's previous determinations. Regarding the proper revocation standard, 19 C.F.R. 353.25(a)(2) requires not only a showing of three years of no dumping and a respondent's certification and agreement to immediate reinstatement in the order, but also a determination that future dumping is not likely. This "second requirement for revocation, that the respondent is not likely to resume dumping, necessarily involves an exercise of discretion and judgment." *Tatung Co. v. United States*, 18 CIT 1137, 1144 (1994). In certain cases, the record may only contain evidence regarding the parties' history of no dumping, which "[o]rdinarily * * * would constitute substantial evidence of expected future behavior." *Id.*; see also *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy*, 60 FR 10950, 10967

(Feb. 28, 1995). In other cases, respondents are able to produce additional evidence demonstrating that future dumping is not likely. See *Steel Wire Rope From Korea*, 62 FR at 17174; *FCOJ From Brazil*, 56 FR at 52510.

In still other cases, the Department has not been satisfied, based on the record before it, that future dumping is not likely. Contrary to respondents' argument, these cases do not necessarily only involve "extremely unusual circumstances." The Department reaches its revocation determinations on a case-by-case basis, depending upon the industry in question, the relevant market conditions and the evidence submitted on the record. See, e.g., *Brass Sheet and Strip from Germany*, 61 FR at 49730; *Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan*, 56 FR 8741, 8742 (March 1, 1991). The Court of International Trade ("CIT") has upheld several determinations by the Department denying revocation. See *Sanyo Elec. Co. v. United States*, 15 CIT 609 (1991); *Toshiba Corp. v. United States*, 15 CIT 597 (1991). While the Court distinguished cases granting revocation based upon the absence of evidence regarding the likelihood of future dumping, in neither case did the Court indicate that revocation should be the rule and denying revocation the exception. See *Toshiba* at 601. Like the Department, the Court properly focused instead upon the facts at issue and the "predictive nature of the revocation proceeding." *Id.* at 603; see also *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984). In the end, the Court concluded that because respondents requested revocation "it was for [respondents] to come forward with 'real evidence' to persuade Commerce to revoke the order." *Toshiba* at 603 (citation omitted).

We also disagree with Hyundai's assertion that the Department erred by relying on *Brass Sheet and Strip* as support for its preliminary determination not to revoke. The Department did not rely upon *Brass Sheet and Strip* as support for each of the elements addressed in the Department's preliminary determination regarding the "not likely" issue. Rather, the Department relied upon *Brass Sheet and Strip* primarily to confirm the legal standard for the type of factors the Department has considered relevant in the past (e.g., conditions and trends in the industry, currency movements and the ability of the foreign entity to compete in the U.S. without dumping).

Finally, we disagree with Hyundai's interpretation of the revocation standard under the Antidumping Agreement. We

note at the outset that all parties agree that the revocation standard, as set forth in the Department's regulations, does not violate the Antidumping Agreement. See e.g., LGS Case Brief at 15 (April 18, 1997). The sole issue involves how this standard is applied to the facts and circumstances of this case. The Department believes that its likelihood determination, given the facts of this case, is entirely consistent with Article 11.2 of the Antidumping Agreement, which establishes a broad based standard under which revocation is warranted if the authorities determine that the order "is no longer warranted."

Comment 2: Whether the Department Applied a Proper and Fair Revocation Standard in its Preliminary Results.

LGS, Hyundai, Compaq and Dell argue that in its preliminary results the Department improperly used the phrase "no likelihood" in lieu of "not likely" in determining whether the requirements for revocation under section 353.25(a)(2) of the Department's regulations had been met. These parties contend that the Department's use of a "no likelihood" standard was unlawful under the Antidumping Agreement because it altered the meaning of the regulation and created a revocation standard which is virtually impossible for respondents to attain. Specifically, LGS, Hyundai, Compaq and Dell contend that the phrase "not likely" connotes only a lack of probability but the phrase "no likelihood" creates a much higher standard which implies that the respondents must demonstrate that there is almost zero probability of dumping in the future. LGS further claims that "not likely" means a probability of 51 percent or greater while "no likelihood" means a probability of 99 percent or greater that the respondent will not dump in the future.

Hyundai and LGS further contend that the Department's use of the "no likelihood" standard is particularly insupportable given that the Department amended its regulations in 1989 to specifically change the phrase "no likelihood" to "not likely." Hyundai asserts that this change was made to clarify the regulation to avoid imposing an impossible burden on respondents seeking revocation. Accordingly, LGS and Hyundai argue that in its final results the Department should follow the "not likely" standard outlined in its current regulations, not the "no likelihood" standard abolished a decade ago.

In addition, LGS argues that the Department's preliminary finding that LGS "may have dumped in the post 1996 period" is irrelevant to the "not

likely" test. LGS asserts that the relevant question is not whether LGS "may" have dumped but whether the company is "not likely" to dump. LGS cites *Crankshafts* to argue that the Department's reliance on something that "may" happen is tantamount to sheer speculation, a standard prohibited by the Department's regulations and explicitly rejected by the Department in practice.

The petitioner counters stating that the Department properly applied the long-standing and judicially recognized "no likelihood" standard. Specifically, the petitioner contends that the Department's long-standing administrative practice has been to use the terms "not likely" and "no likelihood" interchangeably. The petitioner cites *Brass Sheet and Strip, Elemental Sulphur from Canada*, 56 FR 5391 (February 11, 1991) (*Sulphur*) and *FCOJ from Brazil*, 56 FR 52510, in support of its argument. In addition, the petitioner claims that because the Department has used the terms "no likelihood" and "not likely" interchangeably in the past, the regulatory change in 1989 was simply to clarify the revocation standard, not change it. In support of this contention the petitioner cites the CIT's decision in *Toshiba* in which the Court found that the "no likelihood test" does not impose an unattainable standard.

DOC Position

The Department has applied the proper revocation standard, consistent with our longstanding practice, throughout the proceeding. Despite the potential difference in meaning between the phrases "not likely" and "no likelihood" as used in the revocation provisions of the 1988 regulations and the regulations applicable to this proceeding, the Department has consistently applied the same likelihood standard under both sets of regulations. As our practice shows, and as we explain below, the Department has never applied the likelihood standard to require the degree of certainty that dumping will not recur that the respondents claim the phrase "no likelihood" implies.

Prior to 1989, the applicable regulation expressly conditioned revocation upon a finding of "no likelihood" of future dumping. See 19 CFR 353.54(a) (1988). When the Department first proposed the amendment to the regulation in 1986, the Department offered no explanation for substituting "not likely" for "no likelihood," stating only that revocation "is premised on the Secretary's finding that it is *not likely* that the person or

persons will in the future sell the merchandise at less than foreign market value." 51 FR 29046, 29052 (1986) (Preamble to Proposed Regulations) (emphasis added). The one comment received regarding this regulatory provision argued only that the Department should not consider the issue of future dumping at all. *Id.* *Antidumping Duties; Final Rule*, 54 FR 12742, 12758 (March 28, 1989) (Preamble) (emphasis added). The Department disagreed, retained the proposed amendment without revision, and responded to the comment as follows:

The statute gives the Secretary broad discretion in deciding when to revoke an order. The Secretary has determined that a pre-condition to revocation under this paragraph is that the Secretary be satisfied that there is *no likelihood* of future sales at less than foreign market value.

Hence, even in the preamble to the regulation, which substituted "not likely" for "no likelihood," the Department continued to describe the standard using the phrase "no likelihood." Similarly, the Department substituted "not likely" for "no likelihood" when it amended the countervailing duty regulations in 1988. Compare 19 CFR 355.42(a) (1988) with 19 CFR 355.25(a) (1996). Again, the Department gave no explanation.

Thus, in amending the revocation regulation, the Department used the phrases "not likely" and "no likelihood" interchangeably, and consistently failed to draw a legal distinction between the two. The Department has also used the two phrases interchangeably in its administrative practice. See *Silicon Metal From Brazil*, 62 FR 1954, 1957 (Jan. 14, 1997) (*Silicon Metal*); *Fresh Cut Flowers From Colombia*, 61 FR 42833, 42838 (Aug. 19, 1996). In many determinations since amending the regulation in 1989, the Department has described the future dumping standard in terms of "no likelihood" just as it did in this proceeding. See, e.g., *Brass Sheet and Strip*, 61 FR at 49730; *FCOJ*, 56 FR at 52511.

Moreover, contrary to the assertions of LGS and Hyundai, the Department has never interpreted "no likelihood," in practice, to mean a zero probability of dumping, either before the regulations were amended in 1989 or after. The very fact that the Department has revoked numerous orders, in whole or in part, before and after the 1989 amendments, confirms this conclusion. Never once has the Department indicated that it was 100 percent certain there was "no likelihood" of future dumping in any of these cases. As stated by the CIT in

Toshiba, "rarely, if ever, will Commerce be able to predict with certainty what will occur upon revocation." 15 CIT at 599 (citing *Matsushita*, 750 F. 2d at 933). Hence, it is clear that the standard is not an impossibly high one, as the respondents suggest.

Contrary to the assertions of LGS, evidence indicating that a respondent "may have dumped" in the period following the third administrative review is relevant to the Department's "not likely" test. As the Department's practice and the decisions of the courts make clear, the determination regarding the likelihood issue is "inherently predictive" in nature. See, e.g., *Matsushita*, 750 F.2d at 933. The Department ordinarily does not have actual sales and cost data to examine. Therefore, in assessing the likelihood of future dumping, as discussed in more detail in comment 3, below, the Department examines all available record evidence.

Likewise, we are not persuaded by LGS' contention that the "not likely" standard implies that revocation is appropriate if the Department finds at least a 51 percent chance that the respondent will not dump in the future. The Department's regulations and administrative practice properly do not establish a specific, quantifiable standard for determining whether revocation is appropriate. As noted above, in most cases, the presence of three years of no dumping margins and a respondent's certification and agreement to immediate reinstatement in the order are indicative that future dumping is not likely because, in most cases, this is the only record evidence regarding likelihood. Here the facts of record, reasonably interpreted, lead us to a contrary conclusion.

Based on the foregoing, we therefore find that when the Department amended the revocation regulation in 1989 to change the phrase "no likelihood" to "not likely," the purpose of the regulatory change was simply to clarify the revocation standard, not amend it. Therefore, the Department has applied the proper revocation standard throughout this proceeding.

Comment 3: What Time Frame Should be Considered When Determining Whether Future Dumping is Not Likely.

LGS and Hyundai argue that the Department improperly focused on the period immediately following the third administrative review in conducting its preliminary "not likely" analysis. LGS and Hyundai assert that section 353.25(a)(2)(ii) of the Department's regulations instruct the Department to examine whether it is not likely that a

respondent will in the future sell the merchandise at less than normal value. LGS and Hyundai interpret this reference to a period "in the future" as being a time period after revocation of the order. Therefore, LGS and Hyundai assert that in the final results the Department should conduct its "not likely" analysis for the time period beginning the day after the Department issues a revocation determination (i.e., beginning in second quarter 1997).

In addition, LGS and Hyundai argue that because the DRAM industry is highly cyclical, the Department must take into account a respondent's behavior over the long term (i.e., during both market upturns and downturns). In addition, the respondents contend that the Department's preliminary conclusion that DRAM producers "dump during periods of significant downturn" is flawed. If this were true, respondents argue, antidumping duty orders could never be revoked in cases involving cyclical industries.

Hyundai further argues that by implying that respondents must prove they were not dumping after the end of the third administrative review, the petitioner is essentially seeking to restore the old "gap period" reviews which the Department conducted under the former regulations during the 1980's. As Hyundai explains, under the Department's old regulations, a respondent could qualify for revocation on the basis of two years of zero or *de minimis* margins if the respondent was also found not to have dumped during a period of at least nine months after the completion of the second administrative review. Hyundai claims that upon amending the regulations in 1988, the Department eliminated the need for "gap period" reviews, stating instead that revocation would become effective the day after the three-year period.

The petitioner asserts that in conducting its preliminary "not likely" analysis the Department properly examined the period immediately following the end of the third review period. The petitioner claims that the period immediately following the close of the third review period must be examined because any evidence indicating that dumping was likely to have occurred anytime after this period demonstrates the continued need for the protection afforded by the antidumping duty order. The petitioner cites *Silicon Metal* and *Brass Sheet and Strip* as recent cases where the Department examined the period immediately following the third POR to determine whether the requirements for revocation had been met.

DOC Position

We disagree with Hyundai and LGS. While 19 CFR 353.25(a)(2)(ii) requires the Department to assess whether the evidence supports a conclusion that it is not likely the respondents will dump "in the future," respondents are incorrect to interpret this provision as requiring the Department to consider only a time period beginning after the date the Department would issue a revocation determination. Rather, this provision requires the Department to examine all of the evidence available on the record. There is nothing in the Act, the Department's regulations or case precedent that defines the relevant time period in considering the likelihood issue. Common sense, however, dictates that the Department should, as always, base its determination on all record evidence.

In this revocation proceeding the Department considered all publicly available data and information placed on the record by all parties (including data regarding the January 1997 through April 1997 time period, which respondents characterize as a market upturn). We agree that a respondent's past conduct is relevant, including a showing of three years of *de minimis* margins. Market trends and forecasts beyond the possible revocation date may also be relevant. In this case we find the January through December 1996 period to be particularly probative because it corresponded with a significant downturn in the DRAM industry. The DRAM industry is highly cyclical, market prices for DRAMs are generally lower during periods of downturn and there is a history of dumping in the DRAM industry during such periods. It is therefore reasonable to conclude that an examination of the selling activities and pricing practices of respondents during such downturn periods will provide the Department with a reasonable indication as to whether dumping is not likely to occur in the future. Further, the 1996 period is not only the most recent downturn, but one which occurred since the order has been in place.

As discussed further in comment 4, below, based on our analysis of the DRAM industry during the 1996 downturn and other factors, we find that the likelihood standard for revocation set forth in section 353.25(a)(2) of the regulations has not been met. Although we agree with the respondents that market conditions in the DRAM industry have recovered somewhat in 1997 (though not to the extent that respondents argue), neither this fact nor any other evidence regarding future

conditions in the DRAM industry contradicts or significantly detracts from other record evidence indicating that dumping may have taken place during the 1996 downturn. Such evidence suggests that the not likely criterion for revocation has not been satisfied in this case.

For much the same reasons, we disagree with Hyundai that the Department's approach effectively reinstates the "gap period" reviews disavowed when the regulations were amended in 1989. See Preamble to 1989 Regulations, 54 FR at 12758 (discussing "gap period" reviews). At that time, the regulations required only two years of no dumping before the Department would consider revocation. Pursuant to the so-called "gap period" reviews, however, the Department would not revoke the order until after determining that no dumping had occurred during the gap period. This required that the Department conduct an additional administrative review of the respondent's data, involving at least nine months. As discussed above, in evaluating whether future dumping is not likely, the Department may find that the market conditions and trends during a certain period or periods are probative. In this case we found the January through December 1996 time frame to be particularly important to our consideration of the "not likely" issue because it corresponded with a significant downturn in the DRAM industry. We consider it merely coincidental that this time frame coincided with the end of the third administrative review and the period immediately following. Had the most recent downturn occurred during a different time frame, it may have been appropriate to take that period into account in our analysis.

Comment 4: Whether Record Evidence Indicates that Future Dumping by the Korean Respondents is Not Likely.

The petitioner argues that in its preliminary results, the Department drew upon an extensive record, including submissions on market conditions, pricing trends, econometric analyses, newspaper articles and market studies and properly concluded, based on the totality of data, that there was no basis on which to conclude that future dumping by the Korean respondents was not likely.

LGS and Hyundai argue that the Department's preliminary conclusion regarding the "not likely" issue was contrary to law and based on incorrect and outdated data that do not reflect current market conditions. LGS and Hyundai contend that when current

market conditions are viewed, the record indicates that future dumping is not likely. Hyundai submits that in order to make a reasonable prediction of the future, the Department's final decision must be based on the most recent information available. LGS adds that the Court of Appeals for the Federal Circuit has found it be "reversible error" for the Department, in a revocation proceeding, to fail to obtain and consider the most up-to-date information available. See *Freeport Minerals Co. v. United States*, 776 F.2d 1029, 1032 (Fed. Cir. 1985).

In addition to the general comments concerning the Department's preliminary revocation determination noted above, the petitioner and respondents make a number of arguments regarding the specific data relied upon by the Department in its preliminary "not likely" analysis. These arguments are summarized according to topic, below.

A. Pricing Trends in the DRAM Industry

The petitioner argues that during 1996 the DRAM market was in a downturn, with steep worldwide price declines. Citing to data obtained from publicly available reports, the petitioner claims that these price declines are forecasted to continue throughout 1997.

LGS, Hyundai, Compaq, Digital and Dell argue that the worldwide price decline noted in the Department's preliminary results has ended and that current market information indicates that DRAM prices have rebounded significantly in 1997. LGS, Hyundai and Dell further contend that the recent trend towards an equilibrium between supply and demand in the DRAM industry indicates that higher prices are likely in the future. In support of these arguments, LGS, Hyundai, Compaq, Digital and Dell reference actual prices paid in the U.S. market for DRAMs, public statements made by the company officials at Micron, average U.S. prices reported by Dataquest and the American IC Exchange, studies by independent analysts and numerous newspaper and magazine articles. LGS further asserts that because costs in the DRAM industry are constantly declining, in the event that market prices were stable, rather than rising, the likelihood that a respondent would have to sell below cost in order to remain competitive in the U.S. market decreases over time.

The petitioner rebuts the arguments of LGS, Hyundai, Compaq, Digital and Dell. The petitioner argues that the DRAM market is still volatile and that price declines will continue throughout 1997. The petitioner cites recent price

reports, newspaper and magazine articles and market reports which suggest that the temporary rebound in DRAM pricing will soon be over and that prices thereafter will continue to decline throughout 1997. Finally, the petitioner attempts to demonstrate that the DRAM market is still volatile and difficult to predict by pointing out that just 48 hours after the date the respondents cited recent price increases in their case briefs, the worldwide market prices for DRAMs fell more than 10 percent.

B. Inventory Levels

The petitioner argues that, despite the 1996 "glut in the global DRAM market," publicly available data indicate that Korean producers have continued to increase production by bringing new facilities on-line. The petitioner claims that this additional increase in DRAM production will add to the oversupply problem being experienced in the marketplace and will keep DRAM prices depressed throughout 1997. In support of this argument, the petitioner cites public studies by independent analysts and numerous newspaper and magazine articles. In addition, the petitioner cites Brass Sheet and Strip as a recent case where the Department was unable to conclude that future dumping was not likely, based, in part, on competitive conditions in an industry characterized by oversupply.

LGS, Hyundai and Compaq argue that in its preliminary results the Department incorrectly concluded that there is no evidence that the announced DRAM production cutbacks "have occurred." Specifically, LGS, Hyundai and Compaq argue that numerous industry reports confirm that the Korean producers have trimmed production and will continue to reduce their operations in 1997 in order to bring supply and demand into balance. In support of this argument LGS and Hyundai cite publicly available reports and newspaper and magazine articles. The respondents contend that these documents suggest that recent cutbacks in production by Korean DRAM producers have led to market price increases. LGS further argues that the Department's conclusion that "there is a significant DRAM oversupply" and that "the existing DRAM oversupply is likely to cause prices to remain low or fall lower in the future" was based on data which are now outdated. LGS, Hyundai, Compaq and Dell claim that the oversupply conditions present in the DRAM industry in 1996 have disappeared and that the recent cutback in production by the Korean producers, in conjunction with an exploding global

demand, has resulted in a market equilibrium between supply and demand.

Finally, as noted in comment 1 above, LGS contends that reliance on Brass Sheet and Strip as case precedent is misplaced. LGS asserts that unlike Brass Sheet and Strip, where the Department found that there had been a decrease in demand in the European market and that the U.S. market continued to be desirable for exporters, the DRAM demand is booming worldwide. In addition, LGS and Hyundai contend that as a result of the shrinking global supply of DRAMs many producers, including the petitioner, are beginning to return to profitability.

The petitioner rebuts the arguments of LGS, Hyundai and Compaq. According to the petitioner, Korean DRAM producers have not made production cutbacks, but instead have shifted production increases to 64M DRAMs while continuing to produce other DRAM configurations at prior levels and withholding them temporarily from the market. The petitioner cites brokerage house, press and other recent market reports as support for its argument. The petitioner claims that these articles suggest that Korean DRAM producers will stockpile DRAMs long enough to lift prices, but that the eventual release of this inventory into the marketplace will result in continued price declines.

C. The Petitioner's Allegation That LGS and Hyundai Were Dumping in 1996

The petitioner argues that the sales and cost data submitted by Hyundai and LGS in the third administrative review, when viewed in conjunction with publicly available information regarding pricing trends since the end of the third review period, demonstrate that LGS and Hyundai made sales at less than normal value during the second half of 1996 (*i.e.*, the period immediately following the third review period). Specifically, the petitioner contends that the home market sales and cost data submitted by Hyundai and LGS in the present administrative review demonstrate that the two respondents made sales at prices which were below COP during the two months immediately following the end of the third review period (*i.e.*, May and June 1996).

In addition, the petitioner asserts that when the reported costs of LGS and Hyundai are extrapolated through to the end of the fourth quarter 1996 using the same rate of decline actually experienced by the producers in 1995, and then compared to publicly available, average U.S. DRAM price data (compiled by Dataquest and Lehman

Brothers), there is evidence that LGS and Hyundai made U.S. sales at prices below COP during the third and fourth quarters of 1996 as well. Based on the foregoing, the petitioner contends that the Korean respondents were dumping during the second half of 1996.

LGS and Hyundai contend that the Department's preliminary conclusion that the respondents made U.S. sales during the second half of 1996 at prices that appeared to "be near or below normal value and production costs" was based on incomplete and inaccurate data presented by the petitioner. Specifically, regarding the data relied upon in the preliminary results, LGS contends the following: (1) Verified data demonstrate that LGS' actual contract prices with its U.S. customers during 1996 were significantly higher than the average U.S. spot prices provided in the petitioner's analysis; (2) the fact that LGS may have made certain home market sales at prices below its COP does not definitively demonstrate that dumping occurred; and (3) the U.S. price quotes referred to in the petitioner's analysis cannot be relied upon because neither the underlying data nor source for the data were provided by the petitioner.

LGS further argues that the petitioner's analysis overstates the degree to which DRAM prices declined in 1996 because the analysis was based on quarterly prices calculated from prices which were averaged on a simple, rather than a weighted-average basis. LGS claims that when projections based on "corrected" price and cost data are used, the data demonstrate that LGS continued to sell at prices above both the average U.S. spot price and its COP during the second half of 1996. As additional support for its claim that it was not dumping during the second half of 1996, LGS provided what it claimed were actual price and cost data for the post-April 1996 period.

Hyundai also asserts that there were distortions and inaccuracies in the petitioner's data. First, Hyundai contends that the average U.S. price calculated by the petitioner was based on spot prices, rather than OEM contract prices. Hyundai asserts that verified data on the record in the third administrative review indicate that Hyundai's actual U.S. prices during the POR were higher than the average U.S. prices for the first quarter 1996 presented by the petitioner. Therefore, Hyundai claims that there is no correlation between Hyundai's actual prices and the average spot prices provided by the petitioner. In addition, Hyundai asserts that based on an econometric analysis conducted by Dr.

Kenneth Flamm, the market price for DRAMs is expected to exceed Hyundai's COP by substantial margins during 1997 and 1998. Hyundai further attacks the petitioner's analysis stating that it mistakenly compared the average spot price for all 16M DRAMs with the COP of only the 1X16 configuration. Finally, Hyundai argues that the petitioner's data failed to take into account the reductions in cost resulting from the depreciation of the Korean won. Hyundai asserts that when "corrected" price and cost data are used, the average U.S. price remains above Hyundai's COP during the second half of 1996.

The petitioner responds that the data LGS claimed in its case brief were its actual price and cost data actually confirm that LGS was dumping during the second half of 1996. The petitioner contends that the costs reported by LGS are understated for the following reasons: (1) LGS did not include foreign exchange losses on long-term foreign debt in its reported COP; and (2) LGS lengthened its reported depreciation schedule for the second half of 1996. The petitioner claims that this one-time restatement of depreciation expenses caused the sharp decline in costs in July 1996 reported by LGS. The petitioner cites numerous publicly available reports and articles which state that LGS, as well as other Korean DRAM producers, lengthened their depreciation schedules during the second half of 1996 to avoid reporting substantial losses for fiscal year 1996. The petitioner argues that, had LGS not manipulated its costs for the second half of 1996, its reported (but unverified) U.S. prices would have been below its reported COP.

The petitioner rebuts Hyundai's arguments as well. The petitioner argues that the so-called "corrected" prices provided by Hyundai do not reflect actual prices but are, instead, merely derived prices. The petitioner contends that the actual prices paid were usually below the average U.S. DRAM prices provided in the petitioner's analysis. In addition, the petitioner asserts that its analysis correctly compared cost and price data for the 1X16 configuration, not all DRAM models as suggested by Hyundai.

D. Whether Korean DRAM Producers Can Remain Competitive in the U.S. Market Without Dumping

The petitioner argues that due to the market conditions noted in points B and C above, LGS and Hyundai cannot remain competitive in the U.S. market without selling DRAMs at less than normal value.

LGS responds that, regardless of market circumstances, LGS is likely to continue to sell DRAMs in the United States at fair value prices. Specifically, LGS contends that in contrast to the respondents in Brass Sheet and Strip and Steel Wire Rope, the U.S. market is not LGS' principal export market and LGS is not a major supplier to the United States. Therefore, LGS argues, it has no incentive to sell in the United States unless it can make a reasonable profit. In addition, LGS relies upon an economic study by the Law & Economics Consulting Group (LECG study) to contend that LGS has no economic incentive to dump in the United States for a number of reasons. In addition to the argument that its share of the U.S. market is too small to make predatory pricing appealing, LGS contends that, because its prices with OEM customers are based on contracts, it is able to command higher prices from OEM customers during market downturns. In support, LGS asserts that actual, verified prices collected by the Department prove that LGS' contract prices were higher than the spot market prices during 1996. Moreover, the won is currently depreciating against the dollar, negating the possibility of exchange rate dumping. LGS cites Steel Wire Rope and Flowers as confirming the Department's view that "devaluation of the home market currency makes dumping less likely."

In addition, LGS argues that the Department incorrectly found that "the history of the DRAM industry is one of dumping in periods of significant downturn." Specifically, LGS asserts that the behavior of Japanese DRAM producers in 1986 has no bearing on the pricing behavior of unaffiliated Korean producers in 1996. In addition, LGS claims that the fact that the Korean producers were found to be dumping in 1991 and 1992 is not indicative of future dumping. If this were true, LGS asserts, no antidumping duty order could ever be revoked since revocation findings can only exist once an antidumping duty order has been issued.

Finally, LGS and Hyundai argue that the fact that neither respondent has had dumping margins through a variety of market conditions (including downturns) over the past three review periods is indicative that future dumping during any market condition is not likely. See, e.g., Steel Wire Rope (stating that because past appreciation of the Korean won did not cause the respondents to dump, the Department had no basis to conclude that a possible currency appreciation in the future would cause the respondents to change their pricing practices); *Tatung 18 CIT*

at 1144 (finding that with regard to the likelihood requirement for revocation "ordinarily past behavior would constitute substantial evidence of expected future behavior").

The petitioner counters that LGS has the following compelling reasons to dump: (1) OEM customers have leverage over the DRAM suppliers; therefore, OEM customers will not pay significantly higher prices for commodity products such as DRAMs; (2) because of the sheer size of the DRAM market in the United States, LGS' market share accounts for substantial revenues; and (3) LGS needs an outlet for the additional DRAMs it has already committed to producing in 1997. The petitioners contend that the United States is the logical outlet for these additional DRAMs because Europe has recently ended a two-year suspension of a reference price system on Korean DRAMs and Japan is currently flooded with Japanese produced DRAMs.

The petitioner further argues that, unlike in Steel Wire Rope (where the Department concluded that there was no evidence of imported production inputs) and Flowers (where there were "virtually no fixed costs"), Korean DRAM producers import raw materials that account for a large portion of their costs. Therefore, the petitioner asserts that the depreciation of the won increases the COP, making dumping more likely in the United States.

DOC Position

We continue to find that the record supports a conclusion that the not likely criterion for revocation has not been satisfied. In reaching this decision, we have examined all the information on the record, including publicly available data regarding current market conditions. Based on this analysis, we found the January through December 1996 time frame to be particularly relevant because of the significant downturn in the DRAM industry during this period.

A. Pricing Trends in the DRAM Industry

The DRAM market has suffered periodic set-backs over the past 25 years. During the most recent downturn, industry revenues significantly declined. For instance, according to Electronic Buyers News, total worldwide market revenue plunged 38% to \$25.13 billion in 1996. Both Hyundai and LGS reported dramatic decreases in revenues in their 1996 publicly available financial statements. Therefore, as discussed above, we find this time frame to be particularly relevant to the Department's "not

likely" analysis. Although we agree with the respondents that DRAM prices have recovered somewhat during 1997, this does not detract from the fact that prices fell significantly during the 1996 downturn. In any case, it appears that pricing in the DRAM market has not yet fully recovered. Current prices are still lower than in the years preceding the 1996 market downturn, years in which the respondents were found not to be dumping. Furthermore, prices have, in fact, decreased recently. According to Dataquest ("The Semiconductor DQ MONDAY Report", Issue 24, June 23, 1997, and Issue 25, June 30, 1997) the spot market price for the 1Mx16 EDO DRAM decreased from the \$7.45 to \$8.09 range on June 13 to the \$6.30 to \$6.85 range on June 27. Similarly, the price for the higher-density 64M DRAMs continues to fall. In fact, the average price for a 64M DRAM is now in the mid \$40 range, down from \$55 earlier this year. In sum, although the DRAM market has stabilized somewhat, prices continue to fluctuate and a large degree of uncertainty about the direction of the market remains.

B. Inventory Levels

In regard to inventory levels and the supply of DRAMs, the record demonstrates that supply exceeded demand during 1996 and thus far in 1997. While there were conflicting reports as to whether respondents were actually decreasing their DRAM production levels during the 1996 downturn period, prices fell dramatically during 1996 and have not yet fully stabilized. In addition, although the respondents have made public announcements regarding DRAM production cut-backs and it appears that the market has reacted with higher prices, it is unclear how much of an effect this will have on the overall supply of DRAMs. Similarly, it is uncertain how long it will be before production returns to previous levels in anticipation of increased demand in the marketplace. According to Electronic Buyer's News (January 27, 1997, Issue 1042), an upturn in demand in October, 1996, triggered a simultaneous increase in production. As a result, the DRAM market was glutted, driving prices down in December, 1996 to one of the lowest levels during the downturn. A question in the DRAM industry today is whether another temporary spike in demand will trigger a new flow of production, resulting in a new round of market saturation. According to Dataquest (see "When Will the DRAM Market Turn?", February 3, 1997), supply is expected to moderate throughout 1997, but it may

be 1998 before supply will come into balance with demand.

C. The Petitioner's Allegation That LGS and Hyundai Were Dumping in 1996

Throughout this proceeding the petitioner has made a number of submissions, including numerous charts and graphs using the sales and cost data submitted by the respondents during the third administrative review and publicly available information regarding pricing trends, which the petitioner claims demonstrate that LGS and Hyundai made sales at less than normal value during the 1996 downturn. The respondents claim that the petitioner's analysis is flawed because it made a number of erroneous assumptions and was based on incomplete and inaccurate data. In addition, the respondents' contend that when current market conditions are viewed, the record indicates that future dumping is not likely.

We have reviewed the data submitted by the petitioner as well as all arguments and information on the record regarding the veracity of the data and the underlying assumptions. As discussed more fully below, on the basis of that examination, we find that the not likely criterion for revocation has not been satisfied for the following reasons: (1) The respondents' own sales and cost data indicate that there were a substantial number of home market sales made at prices below COP during the two months immediately following the close of the third administrative review; (2) the lowest point of the downturn, in terms of DRAM pricing and other market conditions, did not occur until after mid-1996 (well after the end of the third administrative review period); (3) publicly available spot market pricing data, when viewed in conjunction with the respondent's cost data, extrapolated to a future point in time, indicate that LGS and Hyundai may have made U.S. sales at prices below COP during 1996; (4) respondent's own pricing data indicate that contract prices generally follow the same pricing patterns as spot market prices; and (5) many of the respondents' arguments concerning the alleged distortions and inaccuracies in the petitioner's analysis lack merit. In addition, we find that the respondents made several changes to their costs in the period immediately following the third review period, including changes in depreciation and foreign exchange loss write-offs. For a complete analysis, see the Memorandum to the File from Tom Futtner to Jeffrey P. Bialos, dated July 16, 1997, on file in room B-099 of the main Commerce building.

As the petitioner points out, respondents' data indicate that products were sold in the home market at prices below the COP during May and June of 1996, the two months immediately following the end of the third review period. According to the Department's standard questionnaire for the third review, the respondents were required to report costs and sales for May and June of 1996 to ensure that the proper cost test and contemporaneous sales comparisons could be performed. These data demonstrate that the sales made below cost for both respondents increased in these two months, as the downturn in the DRAM market worsened. We note that, according to the Department's cost test methodology, these below cost sales were not sufficiently numerous for the Department to reject as a basis for determining normal value in this third review. We also agree with LGS that whether it made home market sales at prices below the COP during the two months immediately following the close of the third review period in and of itself does not demonstrate that dumping occurred. However, in light of the market conditions during the downturn and the fact that the months actually examined during the POR did not include the lowest point in the downturn, we find that the existence of below-cost sales during May and June of 1996 suggests that the number of below-cost sales increased following the end of the third review period as the DRAM market worsened. As prices in the DRAM market fell, a substantial number of sales were made below cost. This pattern is suggestive of deteriorating market conditions that often give rise to dumping.

In order to derive the estimated COP for 4M and 16M DRAMs for the third and fourth quarters of 1996, the petitioner took the respondent's actual reported costs for the third administrative review and projected these costs through the year using the same rate of decline experienced in the industry during 1995. Given that costs typically decline over time in the DRAM industry, we find the petitioner's approach to estimating the respondents' COP to be reasonable.

We disagree with the respondents' assertion that the average U.S. prices presented in the petitioner's analysis bear no relation to their actual U.S. prices. We recognize that the petitioner based its analysis upon average U.S. spot market prices instead of contract prices. However, based upon the average gross unit prices calculated using respondent's own data from the POR, it appears that contract prices

generally follow the same pricing patterns as spot market prices. There is even evidence on the record indicating that the actual contract prices were sometimes lower than the average spot prices presented in the petitioner's analysis. We also disagree with LGS' claim that the U.S. price quotes referred to in the petitioner's analysis cannot be relied upon because the source documentation was not provided. The record is clear that the petitioner used prices compiled by Lehman Brothers. These data were similar to other pricing data submitted on the record, including the pricing data obtained from the American Integrated Chip Exchange (AICE) and Dataquest.

Regarding Hyundai's claim that the petitioner's data failed to take into account reductions in cost resulting from the depreciation of the won, we note that Korean DRAM producers import machinery and equipment and many raw materials. In fact, both respondents recorded large foreign exchange losses for fiscal year 1996. Therefore, the depreciation of the won may have actually tended to increase the respondent's COP, making dumping more likely in the United States. At the very least, we find no basis in the record to conclude that this exchange rate depreciation entirely favored the respondents.

Regarding LGS' contention that the petitioner's analysis overstated the degree of DRAM price decline because it was based on monthly prices averaged on a simple, rather than weighted-average basis, we note that petitioner's pricing data generally followed the same downward trend of other pricing data on the record, including the AICE data noted above. In fact, all pricing data on the record followed the same downward trend throughout 1996, whether they were based on a simple average or not. Finally, we disagree with Hyundai's assertion that the preliminary analysis was flawed because it compared the average spot price for all 16M DRAMs with the COP of only the 1X16 configuration. In fact, both the cost and sales data used for this comparison were for the 1X16 configuration, not all DRAM models.

In its case brief, LGS submitted what it claimed were actual price and cost data for the second half of 1996. Our review of this information, however, indicates that there are serious questions whether the reported costs were understated due to significant changes in LGS' depreciation schedule and write-offs of foreign exchange losses. Publicly available data indicate that, for their 1996 financial statements, both LGS and Hyundai changed the

useful life of fixed assets from three years to five years. However, it is unclear exactly to what extent this change reduced the reported costs. Similarly it is unclear how the reported costs were affected by the losses on foreign exchange. Moreover, the fact that LGS failed to identify these adjustments to its costs significantly reduces the reliability of the information. We are uncertain whether LGS made other adjustments to its reported costs. Additionally, we note that LGS did not provide these data until its April 18, 1997, case brief, despite having ample opportunity to do so before the Department's March 10, 1997, preliminary results. Although the Department accepted these data into the record because of the extended deadline for submitting factual information during this revocation proceeding, LGS' delay in submitting the information greatly limits its usefulness. The Department was unable to fully examine the data and perhaps question LGS concerning the composition of the data.

In its case brief Hyundai presented a detailed econometric study conducted by Dr. Kenneth Flamm, Senior Fellow, the Brookings Institution. The cost projections in this analysis included assumptions regarding certain production indices and yields and exchange rates. Prices were projected using econometric techniques including various scenarios for supply, economic growth, and technological change. The study concluded that Hyundai's prices would exceed its cost of production "by a comfortable margin" in all scenarios considered.

We find that the cost portion of the Flamm study was based on several questionable premises including the assumption of certain production yields and rates. The study utilizes a "best case scenario" in terms of certain of these assumptions. Optimistic capacity rates in particular are difficult to accept in a time when major producers, Hyundai included, have announced major cutbacks in the production of DRAMs. Furthermore, as the Flamm study itself points out, the capacity scenario is based on the assumption that DRAM demand will continue to strengthen. However, current market conditions do not bear the strong demand assumption out. According to the AICE's Bulletin for the Day (June 13th), activity in the U.S. market continues to be slow. Similarly, according to Dataquest ("The Semiconductor DQ Monday Report", Issue 24, June 23, 1997), there continues to be a "serious oversupply or inventory excess" in the DRAM market. Also, technological shifts in demand are difficult to predict. For instance, the

study does not mention the rate at which the supply of competing 64M DRAMs can be expected to expand, and put downward pressure on the prices for the 16M generation.

In addition, wholly apart from the data concerning the 1996 downturn, as discussed in sections B and C, above, our analysis indicates that market conditions in the DRAM industry remain volatile. As stated previously, while the plunge in prices began to stabilize somewhat in early 1997, recent data indicate that prices are headed downward again. For example, according to publicly available data, the average U.S. price for a 16M DRAM fell from approximately \$18.00 in May 1996 to approximately \$7.00 in December 1996. According to Dataquest, the price for the 16M as of June 30, 1997, is approximately \$6.50. This represents a 64 percent decline in prices between the end of the third period of review (April 30, 1996) and June 1997. Since DRAMs are a commodity product, it is reasonable to expect that Korean producers will match prevailing market prices in the United States.

D. Whether Korean DRAM Producers Can Remain Competitive in the U.S. Market Without Dumping

As noted above, LGS argues that it has no economic incentive to dump DRAMs in the U.S. market. LGS' key arguments are that its share of the U.S. market is too small for predatory pricing to be successful; that the company's U.S. market share is, nevertheless, steady enough to discourage "promotional" dumping; that dumping did not result from exchange movements; and that LGS knows the U.S. antidumping laws well enough to have avoided "accidental" dumping. LGS concludes its analysis by forecasting increasing demand and price levels in 1997.

The antidumping law is designed to counteract price discrimination by foreign producers and exporters which injures a domestic industry. This requires only a comparison of U.S. prices and normal value and does not allow for the Department to consider the intent of producers and exporters who sell here. That being said, in determining whether it is not likely parties will sell at less than normal value in the future, the issue of whether those parties have an economic incentive to dump is relevant to the Department's analysis. See Preliminary Results, 62 FR at 12796 (citing Brass Sheet and Strip from Germany, 61 FR at 49730). However, it may not be an overriding factor, and must be considered in conjunction with the remaining record evidence and in light

of the Department's experience in administering the revocation provisions. For instance, whether parties can price competitively without dumping depends, among other things, upon short-term and long-term market conditions. In this regard, LGS argues that it has a relatively small share of the U.S. market, which decreases its economic incentive to dump. However, the United States is part of the world's largest regional market for DRAMs, with considerable growth potential. Given the importance of the U.S. market, as a general matter, even a producer with a relatively small market share would have an incentive to ride out industry downturns. The fact that DRAM producers, including the Korean respondents, have historically been found to have dumped during downturns supports this conclusion.

LGS states that its OEM contract customers pay higher-than-spot market prices in a market downturn, and lower-than-spot market prices in a market upturn. In actuality, the record demonstrates that contract prices to OEM customers, which are negotiated on a quarterly basis, follow the direction of prices on the spot market. Dell and Digital both noted such trends based on their own experience. Thus, according to our record, changes in prices of OEM customers simply lagged behind spot prices. In fact, even into 1997, prices to OEM customers remained depressed, and below spot market prices, even as the spot market prices began to show some increase.

Finally, LGS argues that the company did not dump subsequent to the third review period because its production costs were also declining. Historical data support the premise that both costs and prices of any given generation of DRAM will decline over time. What respondents have been unable to demonstrate, however, is that the decline in costs kept up with the rapid rate of decline in prices during the second half of 1996.

In sum, the current condition of the DRAM market and the data on the record supports a conclusion that the not likely criterion for revocation has not been satisfied.

Comment 5: Whether the Antidumping Order is Constraining LGS and Hyundai from Dumping in the U.S. Market.

The petitioner argues that during the third review period LGS and Hyundai were constrained by the antidumping duty order in that both companies took significant steps to minimize the size of their dumping margins. Regarding LGS, the petitioner contends that the company's U.S. sales volume and

number of customers decreased dramatically during 1996, demonstrating that the antidumping duty order was constraining LGS from dumping. In addition, the petitioner claims that LGS' average U.S. DRAM price decline during 1996 was not as severe as the general price declines experienced in the industry during the same period, indicating that LGS was selecting the customers to which it would sell DRAMs directly. Regarding Hyundai, the petitioner asserts that the dumping order forced Hyundai to take measures to ensure that its home market sales were used as the basis for normal value, and that its home market sales prices were always higher than its United States sales prices.

LGS argues that the Department's attempt to speculate as to whether LGS' prices may have been at less than normal value "in the absence of the order" is fundamentally flawed. LGS asserts that no amount of speculation could produce a reliable conclusion as to what "might have happened" if the dumping order had not been in effect during a historical period when the dumping order did in fact exist. Hyundai argues that the Department's findings that the majority of its United States sales were at prices well above normal value in the preliminary results demonstrates that Hyundai's prices were not constrained by the order.

LGS rebuts the petitioner's arguments by arguing that the facts on the record indicate that LGS maintained a consistent U.S. presence during 1996. Specifically, LGS contends that publicly available data indicate that the company's U.S. market share remained stable during 1995 and 1996. In addition, LGS asserts that the petitioner's analysis was flawed because, first, it compared the volume of sales and customer base from the middle of 1995 to the volume of sales and customer base at the beginning of 1996. LGS asserts that such a comparison is not fair, given the seasonal nature of DRAM prices. When prices and costs are compared for the same time period, LGS asserts, verified data show that direct sales in the United States actually increased during 1996. Second, LGS contends that the petitioner's analysis compared unit quantities rather than megabyte quantities. LGS asserts that by only examining unit quantity declines, the petitioner failed to capture the natural shift to higher DRAM generations with larger memory capability. Regarding the petitioner's contention that LGS' price declines were not in line with general industry declines, LGS maintains that during market downturns, the

company's OEM customers pay higher prices than they would on the spot market.

The petitioner contests LGS' assertion that it is illogical to attempt to determine what a respondent's pricing behavior "may" have been if an antidumping duty were not in place. According to the petitioner, it is entirely reasonable for the Department to analyze what a respondent's pricing practices "would have been" in the absence of an order.

DOC Position

We agree with respondents that in the circumstances of this case it would be inappropriate for the Department to speculate as to whether or to what degree, during the first three review periods, the antidumping order on DRAMs from Korea constrained LGS and Hyundai from pricing at less than normal value. At the same time, the Department does not have to find that the order has had no effect on the parties' pricing behavior. The more relevant question is whether the recent significant downturn in the industry affects the likelihood that the Korean respondents will dump in the future. As discussed in Comment 2, above, this is not a question the Department can or needs to answer with certainty. Rather, the Department must be satisfied that future dumping is not likely in order to revoke an order. In this case, based upon the evidence in the record, this standard has not been met and, therefore, we conclude that there is a need for the order to remain in place. Accordingly, we have determined not to revoke, in part, the antidumping duty order on DRAMs from Korea.

II. General Comments

Comment 6: New Factual Information Allegation.

The petitioner argues that LGS, Hyundai, and Compaq submitted new factual information in their April 18, 1997, case briefs. The petitioner asserts that such information is untimely since the established deadline for the submission of factual information regarding revocation was January 27, 1997.

LGS, Hyundai and Compaq argue that the information submitted in their case briefs was not untimely, but instead was responsive to the Department's request in its preliminary results for views on "current and projected market circumstances" regarding the issue of revocation.

The petitioner rebuts the respondents' argument stating that the common meaning of "views" refers to opinions, arguments and conclusions concerning

a given issue, not the submission of new factual information. In addition, the petitioner asserts that in the event the Department determines it is appropriate to accept the additional market information presented in the respondents' case briefs, the data claimed to be the actual price and cost information of LGS cannot be used to support revocation because it is not accurate as discussed in comment 5, above, and was not verified.

DOC Position

We agree with LGS, Hyundai and Compaq. In our preliminary analysis of the revocation issue, we cited trends in DRAM prices and costs as part of our rationale for publishing a preliminary notice of intent not to revoke the order, in part. Our preliminary results also specifically invited comments from interested parties regarding "current and projected market circumstances." The information submitted by the interested parties in their case and rebuttal briefs pertain to current and projected market conditions directly relating to the factors underlying the Department's preliminary "not likely" analysis. Therefore, we agree with LGS, Hyundai and Compaq that this information was solicited by the Department and may have a direct bearing on the factors the Department will consider in making its final "not likely" analysis. Therefore, we find that this data was not untimely filed.

Comment 7: Whether the Department Properly Applied the CEP Offset in the Preliminary Results.

The petitioner argues that the Department should not have applied the CEP offset in its preliminary results because neither LGS nor Hyundai has demonstrated that they were entitled to an adjustment for differences in level of trade. Specifically, the petitioner maintains that the Department erred in determining that one level of trade existed in the home market (direct sales by the parent corporation to the domestic customer) and that a different level of trade existed in the U.S. market, where the Department used the level of trade of the sale to the affiliated importer rather than the resale to the unaffiliated customer (*i.e.*, a "constructed" level of trade). The petitioner asserts that neither the Act nor the SAA permit the Department to use a "constructed" level of trade for constructed export price (CEP) sales when identifying the level of trade. The petitioner argues that section 773(a)(7)(A) of the Act, which provides for a level of trade adjustment, does not make any distinction between export price (EP) sales and CEP sales, and that

the distinction between EP and CEP sales in subsections 772(a) and 772(b) of the Act also does not warrant any different treatment when identifying levels of trade.

The petitioner argues that, in view of the sections of the Act mentioned above, the Department's interpretation of the SAA as permitting a constructed level of trade means that the home market level of trade will always be at a more advanced stage of distribution than the level of trade of the CEP, the data available will never provide an adequate basis to quantify a level of trade adjustment, and thus, the CEP offset will always be used. The petitioner contends that the SAA intended the application of the CEP offset to be an exception, rather than the rule. Therefore, the petitioner asserts that the Department's acceptance of a constructed level of trade contradicts the intent of the SAA and the intent of the statute in section 773(a)(7)(A).

The petitioner further argues that, even if the Department adheres to the distinction between EP and CEP sales in determining the starting price for determining the level of trade, neither respondent has adequately demonstrated that it is entitled to a level of trade adjustment. The petitioner argues that the simple enumeration of selling functions in both the home market and U.S. market is not sufficient to demonstrate the significance of the differing selling functions in both markets.

LGS and Hyundai argue that the Department correctly applied the CEP offset to adjust for differences in the levels of trade in the two markets which were not capable of being quantified. Both respondents assert that the Department's use of a "constructed" level of trade when analyzing CEP sales is in accordance with past interpretation of the SAA and the Act. In addition, LGS maintains that the Department has consistently followed this approach and has explicitly stated in the antidumping questionnaire that a constructed level of trade will be used for CEP sales.

LGS and Hyundai also reject the petitioner's argument that respondents have not adequately documented differences in selling functions in the U.S. and home markets. The respondents claim that in its case brief, the petitioner only referenced the brief discussion of the selling function differences contained in the notice of preliminary results and ignored the detailed analysis presented in the respondents' questionnaire responses and in the Department's preliminary analysis memorandum. Hyundai and LGS contend that the Department's

preliminary analysis memorandum shows that the selling functions actually performed by the respondents on home market sales are much more significant than the selling functions performed for U.S. sales. LGS and Hyundai contend that, because their home market sales were at levels of trade more advanced than their U.S. sales and it was not possible to quantify the price differential caused by these differences, the Department should continue to allow a CEP offset to NV or to constructed value (CV) in order to adjust for the differences in levels of trade between the two markets.

DOC Position

We agree with LGS and Hyundai. We do not base the level of trade on the starting price for both EP and CEP sales. While the petitioner is correct in noting that the starting price for calculating the CEP is that of the subsequent resale by the affiliated importer to an unaffiliated buyer, the Act, as amended by the URAA, and the SAA clearly specify that the relevant sale for our level of trade analysis is the constructed export price transaction between the exporter and the importer.

While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the calculation of the CEP results in a price that corresponds, as closely as possible, to an export price between non-affiliated exporters and importers, as explained in the SAA. See H. Doc. No. 316, 103d Con., 2d Ses., Vol. I, at 823 (1994). In other words, constructing an export price removes a link from a respondent's U.S. distribution chain—the link between the affiliated U.S. importer and its customers. Thus, the CEP is a price exclusive of all expenses and profit associated with economic activities occurring in the United States. The expenses specified in section 772(d) of the Act and the profit associated with those expenses represent activities undertaken in the United States to support U.S. resales to unaffiliated customer. Generally these activities are undertaken by the affiliated importer and occur after the transaction between the exporter and the importer. Because the expenses and profit deducted under section 772(d) represent activities undertaken to support the U.S. resale, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale. Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them from starting price to obtain the CEP level of trade. See, *e.g.*, Antifriction Bearings (Other than Tapered Roller

Bearing) and Parts Thereof from France, et. al.; Final Results of Antidumping Administrative Review, 62 FR 2083, 2105 (January 15, 1997); Roller Chain, other than Bicycle from Japan; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 25165, 25168 (May 8, 1997); and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Administrative Review, 62 FR 18448, 18466 (April 15, 1997). In accordance with our practice, the instructions in the questionnaire issued to respondents in this administrative review properly stated that a constructed level of trade would be used for our level of trade analysis.

We also disagree with the petitioner's assertion that LGS and Hyundai have not adequately documented their respective differences in selling functions in the home and U.S. markets so as to warrant level of trade adjustments (or a CEP offset, as was actually calculated). As noted by respondents, the petitioner referred primarily to the Department's preliminary results of review as published, and disregarded the more detailed data and analysis on the record concerning the differences in selling functions and other factors contained in the Department's preliminary analysis memoranda for both respondents.

In addition to the analysis contained in the preliminary results, these memoranda contain more detailed descriptions of the information provided by respondents and the differences in selling functions between the two markets. Based on this analysis, we concluded that U.S. and home market sales made by both respondents were at different points in the channel of distribution and that the selling functions performed by the respondents for home market sales were sufficiently different from those performed by the respondents for U.S. sales. Therefore, the Department properly determined that the sales made by Hyundai and LGS in the home market were at a different level of trade than the sales made in the United States. As explained in the preliminary results of review, however, we also determined that it was not possible to quantify the price differences resulting from the differing levels of trade, thus justifying a CEP offset to normal value for both respondents pursuant to section 773(a)(7)(B) of the Act. See Preliminary Results, 62 FR at 12798-99.

III. Company Specific Comments

A. Hyundai

Comment 8: Whether Hyundai's Reported Home Market Sales Constitute a Fictitious Market.

The petitioner argues that Hyundai's reported home market sales constitute a fictitious market and cannot be used as a basis for normal value. Specifically, the petitioner contends that beginning in February 1996, Hyundai created a fictitious market by manipulating its home market sales prices in the following manner: (1) Hyundai essentially quit making sales to OEM customers and instead made sales only to a small number of distributors. The petitioner asserts that this allowed Hyundai to control its home market prices; (2) Hyundai stopped making sales at different times throughout the month, and instead only made sales at the end of the month. The petitioner claims that this practice allowed Hyundai to determine the necessary price to charge for those home market sales that would be matched to the U.S. sales prior to making the sale; (3) although the number of home market customers decreased, the quantity of DRAMs sold in the home market increased as the price collapsed. The petitioner asserts that Hyundai did not explain how the Korean market was able to absorb the surge in DRAMs; (4) the Department did not conduct a thorough verification of this issue; and (5) the average unit prices for home market sales which were used as matches to U.S. sales were significantly lower than the average unit prices for DRAM sales not matched to U.S. sales. The petitioner contends that in most instances, the price difference was not warranted because the products which were not used as matches for U.S. sales generally had only one characteristic (e.g., speed) different from those sales that were matched to U.S. sales. Based on these assertions, the petitioner contends that in the final results, the Department should find that a fictitious market exists, disregard Hyundai's reported home market sales and base normal value on facts available.

Hyundai argues that the petitioner's arguments hold no merit and are based on a distorted analysis of the record. Specifically, Hyundai asserts the following: (1) The Department's verification report confirms that the sales made to home market distributors were in fact real sales made to real customers. In addition, Hyundai contends that the Department examined numerous home market sales, including receipts and other documents verifying delivery of the merchandise, at

verification. Therefore, Hyundai asserts that the record indicates that Hyundai's home market sales were bona fide sales; (2) Hyundai contends that the petitioner's assertion that the company priced its home market sales which were matched to U.S. sales at prices that were lower than the prices it charged on sales not used for comparison purposes is factually incorrect and based on a flawed analysis. In addition, Hyundai claims that given that 99.9 percent of its home market sales were used as comparison sales, the petitioner's apparent assumption that Hyundai made up for the revenues sacrificed on lower-priced matched sales with the revenues earned on higher priced non-matched sales is mathematically impossible; (3) Hyundai asserts that the petitioner's claim that the company began making sales only at the end of the month is inaccurate. Hyundai asserts that throughout the POR, its home market sales were usually made during the last 10 days of the month, although on occasion, Hyundai made sales earlier in the month (e.g., in March 1996, Hyundai made sales at various times during the beginning, middle and end of the month); (4) Hyundai argues that its reported home market sales information demonstrates that most of Hyundai's sales throughout the entire POR were to distributors. Therefore, Hyundai asserts that there was nothing unusual about its sales to distributors, as alleged by the petitioner; (5) Hyundai claims that the petitioner's contention that the quantity of DRAMs sold in the home market increased fails to demonstrate anything other than that price reductions stimulate demand; and (6) the petitioner's presentation of pricing patterns in the home market does not satisfy the statutory definition of fictitious market in that it only shows prices moving in tandem, not "differences in movements."

Specifically, Hyundai asserts that the petitioner's pricing data do not show that prices for non-matched sales increased while prices for matched sales decreased. Instead, Hyundai asserts that the petitioner's data show that prices for both types of sales declined over time, a pricing pattern entirely consistent with the normal pricing patterns for the DRAM industry. For all of these reasons, Hyundai argues that the Department should reject the petitioner's assertion that Hyundai's home market is fictitious.

DOC Position

The petitioner failed to raise its fictitious market allegation until filing its case brief following the preliminary results of review. Therefore, the

petitioner's allegation was untimely filed and not adequate to warrant determining that Hyundai's home market sales constitute a fictitious market.

A fictitious market analysis is extraordinary. As the Department stated recently in the preamble to its final regulations implementing the URAA, the Department typically does not engage in a fictitious market analysis under section 773(a)(2) of the Act, or a variety of other analyses called for by section 773, "unless it receives a timely and adequately substantiated allegation from a party." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27357 (May 19, 1997) (Final Regulations) (citing Tubeless Steel Disc Wheels from Brazil, 56 FR 14083 (1991); Porcelain-on-Steel Cooking Ware from Mexico, 58 FR 32095 (1993)). The various provisions of section 773, including section 773(a)(2), "call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis." Final Regulations, 62 FR at 27357. The Department must determine, as a threshold matter, whether such an analysis is warranted based upon the adequacy of the allegation. See Porcelain-on-Steel Cooking Ware, 58 FR at 32096; Electrolytic Manganese Dioxide From Japan, 56 FR 28551, 28555 (May 14, 1993).

The untimely nature of petitioner's allegation during this review prevented the Department from making this threshold determination at an appropriate point in the proceeding. Therefore, we reject petitioner's allegation on this basis alone.

Comment 9: Whether the Normal Value of Further-Manufactured Models Should be Based on Constructed Value.

Hyundai argues that in its preliminary results, the Department improperly compared the prices of its further-manufactured sales of memory modules to the CV of the imported merchandise. Hyundai asserts that this approach is inconsistent with the Department's standard practice of comparing the U.S. price of the product as imported, to the normal value of the identical product. Hyundai cites Certain Internal-Combustion, Industrial Fork Lift Trucks from Japan, 53 FR 12552, 12559 (1988), as case precedent for this practice. Hyundai contends that in its final results, the Department should make price-to-price comparisons for all further manufactured models using the net price of the imported product. Alternatively, in the event the Department determines that it is too

complicated to determine the net price for mixed modules (*i.e.*, modules that include two types of DRAMs), Hyundai argues that the Department could use CV for the mixed modules. Hyundai notes that sales of mixed modules accounted for less than ten percent of its further manufactured sales during the POR.

The petitioner argues that the Department was correct in comparing all of Hyundai's further manufactured U.S. sales to CV. The petitioner asserts that in the first administrative review, the Department stated that "there were no comparable home market sales for U.S. sales of mixed modules and that the configuration and application of mixed memory modules are critical factors in determining the foreign market value of these modules." Based on these facts, the petitioner claims that the Department was compelled to use CV in its preliminary results.

DOC Position

The Act sets forth a preference for basing normal value on the price of the foreign like product and for making price-to-price comparisons, whenever possible. See 19 U.S.C. 1677 (b)(1); 19 CFR 353.46(2)(1996). Therefore, for single memory modules, because there were home market sales of merchandise identical to the merchandise imported into the United States, we agree with Hyundai that, rather than resorting to CV, the Department should have followed its practice of comparing the U.S. price of the imported product (*i.e.*, the DRAM) to the weighted-average price of the comparison product sold in the home market for single memory modules. We have made this correction in the final results.

With regard to mixed memory modules, we agree with the petitioner that the Department correctly applied CV. Mixed memory modules are modules which contain more than one type of DRAM. In order to determine the net imported price for each type of DRAM, it would be necessary to allocate the net price of all DRAMs included in the mixed module to the individual DRAM types on the basis of relative costs. Due to the small quantity of mixed module sales in the United States and the complexity of such a calculation, we find that the use of CV is reasonable for mixed memory modules.

Comment 10: Clerical Errors.

The petitioner argues that the Department made the following clerical errors in its preliminary margin calculation for Hyundai: (1) The Department calculated CV profit on the basis of all home market sales, instead

of using only those sales that were found to be above cost; and (2) the Department improperly excluded imputed credit and inventory carrying costs from the calculation of total U.S. expenses for the CEP profit calculation.

Hyundai agrees that the Department incorrectly calculated CV profit using all home market sales, rather than only those sales that were found to be above COP. With respect to CEP profit, Hyundai argues that the Department properly excluded imputed credit and inventory carrying costs from both the calculation of the profit percentage and the calculation of total U.S. expenses used in the CEP profit calculation.

DOC Position

We agree with the petitioner that the Department inadvertently included those home market sales which did not pass the COP test in the pool of sales used to calculate CV profit. We have corrected this error in these final results. In reviewing the margin calculation program it was noted that in the calculation of CEP profit duty drawback was inadvertently subtracted, rather than added. In addition, we noted that imputed credit and inventory carrying costs were inadvertently included in the pool of expenses used to calculate the selling expenses for CV. We have corrected these errors. Regarding the calculation of CEP profit, we agree with the petitioner that imputed credit and inventory carrying costs should have been included in the calculation of total U.S. expenses used to calculate CEP profit, although this did not necessarily constitute a clerical error. Including these expenses is consistent with section 772(f)(2)(B) of the Act. This provision defines the term "total United States expenses" as those expenses described under sections 772(d)(1) and (2) of the Act, which in turn include these imputed credit and inventory carrying costs. We have corrected this error in the final results.

However, the Department properly excluded imputed credit and inventory carrying costs from the pool of selling expenses used to calculate the company's actual profit percentage. Because Hyundai's actual interest expense (as reported in the CV database) is accounted for in the calculation of profit there is no need to include imputed interest amounts. "Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator." Certain Cold-Rolled

and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18440 (April 15, 1997); accord Preliminary Determination of Sales at Less Than Fair Value: Fresh Tomatoes from Mexico, 61 FR 56612 (November 1, 1996).

B. LGS

Comment 11: Research and Development Expenses.

The petitioner argues that the Department erred in its preliminary results by accepting LGS' reported DRAM research and development (R&D) expenses which allocated DRAM R&D expenses over DRAM cost of sales. The petitioner maintains that, in accordance with the first and second administrative reviews, the Department should allocate LGS' R&D expenses related to all semiconductors over its 1995 total cost of sales for all semiconductors.

LGS responds that the Department did revise LGS' reported R&D expenses in the preliminary results. However, LGS takes issue with the Department's recalculation. Specifically, LGS contends that the Department erroneously included R&D costs for products other than subject DRAMs in its calculation. LGS asserts that the same methodology was used in the less than fair value investigation and was reversed by the CIT, which found that the record evidence did not support a departure from the Department's practice of assigning research and development as specifically as possible to individual products. LGS argues that in the final results the Department should calculate the research and development rate by dividing the company's total DRAM research and development expenses for 1995 by its total DRAM cost of sales.

In its rebuttal brief the petitioner states that if the Department, in fact, recalculated the research and development expense ratio in its preliminary results by allocating the company's 1995 R&D expenses for all semiconductors over its 1995 total cost of sales, the petitioner fully supports the Department's preliminary calculation.

DOC Position

In the preliminary results we properly calculated a R&D rate for LGS by allocating all semiconductor R&D expenses over the company's cost of sales for all semiconductors as reported in its audited 1995 financial statements. This method of allocation is consistent with our practice in the last two administrative reviews, where we determined that sufficient evidence of cross-fertilization exists in the semiconductor industry to rule out the

use of product or DRAM-specific research and development expenses. See Dynamic Random Access Memory Semiconductors from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 62 FR 965, 967 (January 7, 1997); 61 FR 20216, 20218 (May 6, 1996). We have included in the record of this review a memorandum from a non-partisan expert relied upon in previous reviews, which describes the cross-fertilization and includes relevant pages from verification exhibits. See Memorandum regarding cross-fertilization of research and development costs for DRAMs, August 14, 1995.

Comment 12: Clerical Errors.

The petitioner argues that the Department made the following clerical errors in its preliminary margin calculation for LGS: (1) The Department failed to deduct early payment discounts from the calculation of the net price used in the cost test; (2) the Department's preliminary margin program used the wrong customer codes to identify sales made to home market customers which failed the Department's arm's-length test; as a result, the petitioner contends that sales to these customers were improperly included in the calculation of normal value; (3) although the preliminary margin calculation properly recalculated G&A and interest expenses for DRAMs, the Department failed to similarly recalculate G&A and interest expenses for modules; (4) the Department inadvertently double counted home market indirect selling expenses, bank fees and packing expenses in its calculation of total costs for the CEP profit calculation; and (5) the Department improperly excluded imputed credit expenses from the calculation of total U.S. expenses used to calculate CEP profit.

LGS rebuts the petitioner's first alleged clerical error. LGS states that the Department should not deduct early payment discounts from the net price used in the cost test because these discounts were included in the build-up of the COP to which the net price was compared.

LGS alleged the following clerical errors in the Department's preliminary margin calculations: (1) The Department inadvertently double counted home market indirect selling expenses in its calculation of COP; (2) the Department improperly excluded U.S. imputed credit expenses from the calculation of total expenses used to calculate the CEP profit percentage; and (3) the Department improperly calculated a single, weighted-average home market direct selling expense and indirect

selling expense for CV based on the quantity of sales. LGS asserts that because direct and indirect selling expenses are allocated to sales based on value, and products with a relatively higher sales value carry a proportionately higher share of selling expenses, the Department should calculate weighted-average indirect and direct selling expenses based on density, not quantity.

The petitioner argues that LGS did not explain why basing the calculation of the weighted-average selling expenses for CV on sales volume is inherently wrong or a clerical error. Therefore, the petitioner argues that there is no need for the Department to make the proposed change in allocation in its margin calculations. In addition, the petitioner asserts that the Department correctly deducted U.S. imputed credit expenses from the calculation of total expenses used to calculate the actual CEP profit percentage.

DOC Position

We agree that the Department committed all five clerical errors alleged by the petitioner and the first clerical error alleged by LGS. These errors have been corrected in the final results. In addition, in reviewing the margin calculation program we discovered that U.S. re-packing expenses had been deducted twice in the calculation of the CEP profit rate, that imputed credit and inventory carrying costs were inadvertently included in the pool of expenses used to calculate selling expenses for CV, and that the weighted-average direct and indirect selling expenses for CV had been calculated based on all home market sales, rather than just those sales which passed the COP test. We have corrected these errors. Finally, in response to LGS' concern, we have ensured that the calculation of the net price and COP used in the cost test were on the same basis.

We disagree with LGS that the Department should have calculated the weighted-average direct and indirect selling expenses to be included in the calculation of CV based on density not quantity. LGS has not explained why it would be more accurate to calculate selling expenses for DRAMs based on density. In addition, based on information on the record it does not appear that selling expenses are incurred by LGS based on the density of different products. Finally, it is the Department's practice to calculate weighted-average selling expenses for CV based on the quantity of sales.

We disagree with LGS' contention that the Department improperly

excluded imputed credit expenses from the pool of expenses used to calculate the actual CEP profit percentage. Because the actual interest expense of LGS was captured in the profit calculation there is no need to include an amount for imputed interest. See Comment 10, above.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the POR:

Manufacturer/exporter	Percent Margin
Hyundai Electronic Industries, Inc	0.00
LG Semicon Co., Ltd	0.01

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisal instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firms will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85 percent, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in previous administrative reviews, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabyte and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the

final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 16, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-19552 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-DS-U

DEPARTMENT OF COMMERCE

International Trade Administration

A-583-815

Certain Welded Stainless Steel Pipe From Taiwan; Extension of Time Limit for Antidumping Duty Administrative Review

July 17, 1997.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of antidumping administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period December 1, 1995 through November 30, 1996.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482-5222, AD/CVD Enforcement, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the normal time frame, the Department is extending the time limit for completion of the preliminary results until December 31, 1997, in accordance with section 751 (a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B-099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751 (a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: July 17, 1997.

Joseph A. Spetrini

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97-19553 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-412-811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for final results of the third administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom to no later than October 6, 1997. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act).

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Suzanne King,

Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2786.

POSTPONEMENT: Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the final results of the review within the statutory time limit of 120 days after the publication of the preliminary results in the **Federal Register**. The Department finds that it is not practicable to complete the final results of the calendar year 1995 administrative review of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom within this time limit. See Memorandum to the Acting Assistant Secretary for Import Administration dated July 9, 1997 (public document, on file in the Central Records Unit, Room B-099 of the Main Commerce Building).

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the final results of this review from August 5, 1997 to no later than October 6, 1997.

Dated: July 16, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-19409 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062497D]

Peer Review of Red Snapper Research and Management in the Gulf of Mexico; Peer Review Panel Meetings

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

ACTION: Notice of peer review panel meetings.

SUMMARY: Pursuant to section 407(a) of the Magnuson-Stevens Fishery Conservation and Management Act which requires the Secretary to initiate

an independent peer review of the basis for management of the red snapper stock in the Gulf of Mexico, NMFS is announcing the dates, times, and locations of the review panel meetings.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates and locations.

FOR FURTHER INFORMATION CONTACT: John Witzig, NMFS, Telephone: (301)713-2363, Fax (301) 713-1875.

ADDRESSES: Office of Science and Technology, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Locations

1. The Statistics Review Panel meeting was held from July 21, 1997, to July 25, 1997, 8:00 am to 6:30 p.m. CST at the Wyndham Hotel, 701 Convention Center Blvd., New Orleans, La 70130. Advance notices were sent to 307 individuals and organizations with an interest in the fisheries affected by these reviews.

2. Economics Review Panel: August 18, 1997 to August 22, 1997, 8:00 a.m. to 5:30 p.m. CST-Holiday Inn Crown Plaza, 333 Poydras St., New Orleans, La 70130; Tel:(504) 524-8200.

3. Science and Management Review Panel: August 25, 1997 to August 29, 1997, 8:00 a.m. to 5:30 p.m. CST—Wyndham Hotel, 701 Convention Center Blvd., New Orleans, La 70130; Tel:(504) 524-8200.

Time will be allotted for commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico and other interested parties to provide relevant information to each of the three review panels. NMFS requests that persons planning to present information at any of the panel meetings notify the contact person at the phone number provide and provide six written copies of their presentation to NMFS at the meeting.

Special Accommodations

These review panel meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Witzig at (301) 713-2363 at least 5 days prior to the review panel meeting.

Dated: July 18, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97-19543 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070997F]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Addition to a public meeting notice.

SUMMARY: The agenda for a series of public meetings of the Pacific Fishery Management Council's Coastal Pelagic Species (CPS) Plan Development Team and CPS Advisory Subpanel was published on July 16, 1997. A meeting has been added to the agenda. See **DATES** and **ADDRESSES** for the additional meeting.

DATES: The meeting for the Team/Subpanel will be held on Wednesday, September 3, 1997, beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the California Department of Fish and Game office, 20 Lower Ragsdale Drive, Suite 100, Monterey, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Larry Jacobson, telephone: (619) 546-7117; or Doyle Hanan, telephone: (619) 546-7170.

SUPPLEMENTARY INFORMATION: The original agenda was published in the **Federal Register** on July 16, 1997 (62 FR 38068). All other information previously published remains unchanged.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: July 17, 1997.

Bruce C. Morehead,

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

[FR Doc. 97-19459 Filed 7-23-97; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071697B]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Geographical Information Systems (GIS) Essential Fish Habitat (EFH) Distribution and GIS Species Distribution and Habitat Utilization Sub-Groups.

DATES: The meetings will be held July 29–31, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 803–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571–4366; fax: (803) 769–4520; email: susan_buchanan@noaa.gov.

SUPPLEMENTARY INFORMATION:**Meeting Dates**

July 29, 1997, 1:00 p.m. to 6:00 p.m.;
July 30, 1997, 8:30 a.m. to 12:30 p.m.

The GIS EFH Distribution Sub-Group will meet to review and compile EFH distribution information for major habitat types in state and regional GIS systems.

July 30, 1997, 1:30 p.m. to 6:00 p.m.;
July 31, 1997, 8:30 a.m. to 3:00 p.m.

The GIS Species Distribution and Habitat Utilization Sub-Group will meet to review species distribution information in state and regional GIS systems and to review information on EFH utilized by species under South Atlantic Council management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by July 24, 1997.

Dated: July 18, 1997.

Gary C. Matlock,

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

[FR Doc. 97–19463 Filed 7–23–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071697C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Vessel Monitoring System (VMS) Committee.

DATES: The meeting will be held August 12, 1997, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the Executive Centre, Suite 302, Honolulu, HI; telephone: 808–539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The VMS Committee will discuss and may make recommendations to the Council on the following agenda items:

1. Data confidentiality issues;
2. Use of VMS data for fisheries assessment research;
3. The future of the Hawaii VMS Program; and
4. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: July 17, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–19460 Filed 7–23–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.071797A]

Marine Mammals; Scientific Research Permit PHF# 782–1355

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, WA 98115 (Principal Investigator: Dr. Howard Braham; Co Investigators: Dr. Thomas R. Loughlin and Mr. David E. Withrow), has been issued a permit to take harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115 (tel: 206/526–6150); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (tel: 907/586–7221).

SUPPLEMENTARY INFORMATION: On June 6, 1997, notice was published in the **Federal Register** (62 FR 31083) that a request for a scientific research permit to take harbor seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: July 15, 1997.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 97–19543 Filed 7-23-97; 8:45 am]

BILLING CODE 3510–22–F

**CONSUMER PRODUCT SAFETY
COMMISSION****Conditions Under Which the Staff Will
Refrain From Making Preliminary
Hazard Determinations**

AGENCY: Consumer Product Safety
Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Act requires manufacturers, distributors, and retailers of consumer products distributed in commerce to notify the Commission of certain defects, unreasonable risks, or non-compliance with voluntary or mandatory standards. The Commission has made permanent its "No PD" program: The staff refrains from making a preliminary hazard determination when firms report and, within 20 working days, implement an acceptable corrective action.

DATES: The Commission's revised procedures became permanent on March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

Marc J. Schoem, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (mailing address: Washington, DC 20207); telephone 301-504-0608, extension 1365; e-mail address "sect15@cpsc.gov."

SUPPLEMENTARY INFORMATION:**A. Background**

Under section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), manufacturers, distributors, and retailers of consumer products must report certain potential product hazards to the Commission. They must report immediately if they obtain information which reasonably supports the conclusion that a product (1) fails to comply with certain mandatory or voluntary standards, (2) contains a defect which could create a substantial product hazard, or (3) creates an unreasonable risk of serious injury or death. 15 U.S.C. 2064(b).

If the Commission believes that a product presents a substantial product hazard under the CPSA, 15 U.S.C. § 2064 (c) and (d), or contains a defect which creates a substantial risk of injury to children under the Federal Hazardous Substances Act, 15 U.S.C. § 1274(a), (b) and (c), it may pursue corrective action.

After receiving a report, the Commission staff evaluates the hazard. If the available facts justify pursuing corrective action for the product, the staff generally makes a preliminary determination ("PD") of "substantial product hazard" or "substantial risk of

injury to children." See 16 CFR 1115.12(a).

B. Initiation of "No PD" Pilot Program

On August 17, 1995, the Commission initiated a six-month pilot program in which, under certain conditions, the Office of Compliance staff would not make a preliminary determination. See 60 Fed. Reg. 42848 (Aug. 17, 1995). Later, the Commission extended the pilot program through March 1997.

The Commission initiated the pilot program to use staff resources more efficiently and to promote quicker recalls. In addition, the Commission hoped to reduce any disincentive to companies that want to report and undertake corrective action, but fear the consequences of a staff preliminary determination.

When the staff preliminarily determines that a product presents a substantial risk of injury to children, it requests that the reporting company take corrective action. If a company acts promptly to correct a defective product, staff resources can be devoted to helping the company recall the product instead of investigating the defect and making the preliminary determination.

The Commission designed the pilot program to "reward" companies that acted quickly on a corrective action. The staff made no preliminary determination concerning the products of those companies.

C. Results of Pilot Program

The pilot program was successful. During its first six months, companies participating in the program initiated 57 corrective action plans that affected approximately 3.5 million products. By the end of the pilot program's extension, companies had initiated 140 recalls of approximately 12.9 million products.

On average, companies in the pilot program took 14 working days to initiate corrective action plans. The staff sometimes granted an extension of time for issuance of a joint news release or final staff approval of an alternative notice program. In most of those cases, however, the firm's corrective action plan was underway within 20 working days.

During the pilot program, companies undertook corrective actions for a variety of products. They included children's articles with small parts that presented choking hazards, products that collapsed and presented impact hazards, bicycles and recreational vehicles that could cause falls or loss of control, products that presented the risk of carbon monoxide poisoning, electrical products that presented shock

and fire risks, and power tools that could cause serious lacerations.

Industry response to the pilot program was positive. During the program, more than one-third of the companies making section 15 reports initiated corrective actions under the "no preliminary determination" approach.

D. Permanent Program

After reviewing the results of the pilot program, the Commission revised its procedures on a permanent basis effective March 24, 1997. The permanent program is governed by the following requirements and procedures:

1. If a company reports and implements within 20 working days after filing an initial report a corrective action that the staff believes will be effective, the staff will generally refrain from making a preliminary determination. "Implement" means issuance of a news release or other form of public notice approved by the staff commencing a consumer-level corrective action.

If the Commission believes that more than 20 working days is necessary, the Director of the Division of Corrective Actions may extend the time period for any appropriate reason, including that: (a) technically complex issues must be resolved to assure the staff that the company's action is adequate (for example, laboratory testing is necessary); (b) retailers and distributors must be notified in advance so that the plan will be effective; or (c) the news release must be scheduled for optimum coverage (for example, a video news release is necessary).

2. A company's reporting obligations remain unchanged. Specifically, companies that have an obligation to notify the Commission under section 15(b) or section 37 of the CPSA, or section 102 of the Child Safety Protection Act, must continue to do so even when they believe the risk does not warrant corrective action.

3. A company must file a full report under 16 CFR 1115.13(d). In particular, the report must include copies of complaints and claims, which is crucial for staff evaluation and which many companies currently omit.

4. A company must advise the staff that it wishes to participate in the program.

5. A company must submit a proposed corrective action plan in sufficient time for the staff to review and analyze it. In addition, the staff must have sufficient time to work out the details of the corrective action with the company. All of this must occur before the company initiates the plan

within 20 working days of filing its report.

6. A company's proposed corrective action plan must include:

(a) A description of the recall action (refund, repair, or replacement) that the company will take to eliminate the identified risk.

(b) Sufficient product design, incident, and testing information to allow the staff to determine whether the proposed action corrects the identified problem and the problem is limited to the model(s) and production dates identified by the company. Such information should include, but is not limited to: consumer complaints, test data, engineering drawings, material specifications, samples of product, and/or component parts, as needed. If the needed information and documentation is being compiled, but is not yet available, the company must provide the date it expects to forward the information to CPSC. CPSC staff must have sufficient time to review the information and respond within the 20 working day time limit.

(c) Usually, the company's proposed plan must include notice of the recall to distributors, retailers, and consumers of the subject product. The notice must describe the product, the hazard, the number and type of injuries that have been reported, the type of injury that can occur, and the action to be taken in plain language understandable to the people to whom the notice is directed. Generally, the plan must include a joint news release with the Commission announcing the recall, letters and instructions to retailers and distributors, point-of-purchase posters, and, depending upon the level of risk, the population at risk, age and number of products involved, additional notice. Supplementary notice may include a video news release, print and/or radio advertisements, incentives or bounties to encourage consumer response, posters for specific audiences, such as for posting in pediatricians' offices, medical clinics, national parks and campgrounds, and repair shops (see *Corrective Action Handbook*, available for CPSC Division of Corrective Actions). In those cases where all purchasers can be contacted directly, a news release may not be necessary.

(d) An agreement that the Commission may publicize the terms of the plan and inform the public of the nature and the extent of the alleged hazard. The consumer notice should be targeted to reach a significant portion of the public likely to have purchased the subject product. (See 16 CFR

§ 1115.20(a) and CPSC *Corrective Action Handbook*.)

7. The corrective action plan and notice must be acceptable to the staff. The staff will consider whether the corrective action plan adequately addresses the risk of injury presented by the product and whether the notice and corrective action plan are designed to make the plan as effective as is reasonably possible given the nature of the product and the risk.

8. The staff will provide expedited review of every proposal submitted and work with every interested company to develop an acceptable corrective action plan that can be implemented within 20 working days. However, there may be cases where the staff cannot evaluate and approve implementation of a corrective action plan within 20 working days, even though the company has submitted all the necessary information in a timely manner. Similarly, there may be cases where the staff and firm agree that notice and corrective action should occur after 20 working days have passed (for example, in the case of a seasonal product). So long as delay is not caused by or the fault of the company, the staff generally will not make a preliminary hazard determination.

9. If corrective action is implemented within 20 working days, staff will acknowledge in writing that the company has submitted information under section 15(b) of the CPSA and that, based on available information, the proposed corrective action plan is adequate. In addition, the staff will advise the company that it has a continuing obligation to report new or different information that may affect the scope, prevalence or seriousness of the defect or hazard. Once the company implements its corrective action plan, the staff will monitor its progress.

10. If the company does not implement a corrective action acceptable to the staff within 20 working days, the staff will continue its evaluation and will preliminarily determine whether the product contains a defect that creates a substantial risk of injury to children under the FHSA or presents a substantial product hazard under the CPSA. The staff will so inform the company.

11. A company should not delay its report under section 15(b) of the CPSA in order to prepare a corrective action plan. The staff will not refrain from making a preliminary determination if the information available suggests that a company did so.

Dated: July 21, 1997.

Todd A. Stevenson,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 97-19554 Filed 7-23-97; 8:45 am]

BILLING CODE 6355-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: Thursday, July 31, 1997, from 2 p.m. to 3:30 p.m.

PLACE: The meeting will be held via conference call.

STATUS: The meeting will be closed, pursuant to exemptions (4) and (9(b)) of the Government in the Sunshine Act. The basis for this closing has been certified by the Corporation's Acting General Counsel. A copy of the certification will be posted for public inspection at the Corporation's headquarters at 1201 New York Avenue NW, Suite 8200, Washington, DC 20525, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED: This is a correction to the original **Federal Register** Notice, dated July 22, 1997, page 39214. The Board of Directors of the Corporation will meet to deliberate and make decisions on grant awards in the following areas. AmeriCorps*State formula programs, AmeriCorps Education Awards Program, and Learn and Service America fund for the advancement of service learning and local education agencies.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National and Community Service, 1201 New York Avenue NW, 8th Floor, Washington DC 20525. Telephone (202) 606-5000, ext 282.

Dated: July 22, 1997.

Stewart A. Davis,

Acting General Counsel.

[FR Doc. 97-19707 Filed 7-22-97; 3:44 pm]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE**Department of the Air Force****Notice of Availability of Surplus Real Property**

Property Identification: Norton Air Force Base Officers' Housing.

Property Location: San Bernardino, CA.

Name of Holding Agency: United States Air Force.

Federal Disposal Agent: Air Force Base Conversion Agency, 1700 N. Moore Street, Suite 2300, Arlington VA 22209-2802.

Point of Contact: Dale Jackson, Program Manager, 703-696-5554 FAX: 703-696-1085.

Closure Date: March 31, 1996.

Property Data: 34 acres of land improved with 56 houses.

Known Use Limitations: Compatibility with industrial/commercial uses, approximately 15 houses to be demolished for road construction.

Utilities: Available on site.

Outstanding Interests: None.

Expressed Interest: Potential Economic Development Conveyance to Inland Valley Development Agency.

Reimbursement: Fair Market Value required unless discounted under a special disposal provision in FPMR § 101-47.308.

Important Note: This property was screened for DOD and Federal interest and is now being screened by the Inland Valley Development Agency under the regulations at 32 CFR Parts 90 and 91. Interested parties should consult with the Inland Valley Development Agency at 201 North "E" Street Suite 203, San Bernardino, CA 92401-1507, (909) 885-4832 telephone and (909) 386-7591 Fax. Final disposal decisions will be based on economic development and job creation potential, IVDA comments, and other factors in the determination of highest and best use.

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97-19501 Filed 7-23-97; 8:45 am]

BILLING CODE 3910-01-P

DEPARTMENT OF DEFENSE**Department of the Army****Availability of Inventions for Non-Exclusive, Partially Exclusive, or Exclusive Licensing**

AGENCY: U.S. Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following Army inventions for non-exclusive, partially

exclusive or exclusive licensing. Each of the listed inventions have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These inventions cover a variety of battery and capacitor technologies and technical arts as well as other applications.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and Section 207 of Title 35, United States Code, the Department of the Army, as represented by the Army Research Laboratory, wishes to license the inventions listed below in a non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes involved in these inventions.

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, 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. 97-19322 Filed 7-23-97; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION**Advisory Committee on Student Financial Assistance; Meeting**

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. This document is intended to notify the general public.

DATES AND TIMES: Monday, August 11, 1997, beginning at 9:00 a.m. and ending at approximately 4:30 p.m. and Tuesday, August 12, beginning at 8:30 a.m. ending at approximately 2:00 p.m.

ADDRESSES: Southern Maine Technical College, the Peter A. McKernan

Hospitality Center, 2 Fort Road, South Portland, Maine 04106.

FOR FURTHER INFORMATION CONTACT: Dr. Brain K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee was directed to report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997. The Committee submitted to Congress its final recommendations on the advisability of fully implementing the FDLP on December 11, 1996. The Advisory Committee has now focused its energies on activities related to reauthorization of the Higher Education Act of 1998.

The Advisory Committee will meet in Portland, Maine on August 11, 1997, from 9:00 a.m. to approximately 4:30 p.m. and on August 12, from 8:30 a.m. to approximately 2:00 p.m.

The proposed agenda includes presentations and discussion sessions on (a) congressional and other legislative proposals pertaining to reauthorization of the Higher Education Act; (b) an update of the Department of Education's reauthorization proposals; and (c) reforming the management of Title IV delivery. In addition, the Committee will discuss its agenda for fiscal year 1998 and other Committee business. Space is limited and you are

encouraged to register early if you plan to attend. You may register through Internet at ADV_COMSFA@ED.gov or Tracy_Deanna_Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register through Internet, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401-3467. Also, you may contact the Advisory Committee staff at (202) 708-7439. **The registration deadline is Monday, August 4, 1997.** For information on Southern Maine Technical College, hotels, airports, and local transportation, contact the Advisory Committee office.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: July 18, 1997.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 97-19466 Filed 7-23-97; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-3390-000]

Central Maine Power Company; Notice of Filing

July 17, 1997.

Take notice that on July 3, 1997, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

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 Avenue, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-19464 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-634-000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

July 18, 1997.

Take notice that on July 11, 1997, Colorado Interstate Gas Company (CIG), P.O. box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP97-634-000 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 a new meter station at an existing delivery point in Colorado, under CIG's blanket certificate issued in Docket No. CP83-21-000 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.

CIG proposes the new San Juan delivery facility to be located in Section 26, Township 33 South, Range 66 West, Las Animas County, Colorado. The facility will consist of a two-inch meter run and appurtenant facilities thereto for the delivery of gas to Apache Canyon Gas, LLC, a producer, for start up fuel gas for their compression facility. The delivery facility estimated at costing approximately \$6,000 will deliver approximately 100 Mcf per day.

CIG states that the new installation will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit the addition of new delivery points, 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 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. 97-19454 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-283-004]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 18, 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 sheet bearing an issue date of July 14, 1997, with a proposed effective date of August 1, 1997.

Third Revised Sheet No. 176

Columbia Gulf states that the revised filing is made in accordance with the Commission's order issued July 2, 1997, in this proceeding and Section 154.206 of the Commission's regulations (18 CFR Section 154.206). Columbia Gulf states that the tariff sheet reflects the change required by the July 2, 1997 Order.

Columbia Gulf states 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, N.E., Washington, D.C. 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 Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-19456 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-632-000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

July 18, 1997.

Take notice that on July 11, 1997, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97-632-000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to abandon and operate facilities in Mississippi County, Arkansas under NGT's blanket certificate issued in Docket No. CP82-384-000 and CP82-384-001 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.

NGT proposes to reduce operating cost by replacing and upgrading inefficient metering tubes at an existing tap on its Line J. The replacement will also increase the meter stations delivery design capacity from 18,000 MMBtu/day to 40,000 MMBtu/day. The estimated total cost of the project is \$9,965.

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. 97-19452 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-275-005 and TM97-2-59-003]

Northern Natural Gas Company; Notice of Compliance Filing

July 18, 1997.

Take notice that on July 16, 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 proposed to become effective on May 1, 1997 and June 1, 1997:

Effective May 1, 1997

2nd Substitute Fourth Revised Sheet No. 61
2nd Substitute Fourth Revised Sheet No. 62
2nd Substitute Fourth Revised Sheet No. 63
2nd Substitute Fourth Revised Sheet No. 64

Effective June 1, 1997

2nd Substitute Fifth Revised Sheet No. 61
2nd Substitute Fifth Revised Sheet No. 62
2nd Substitute Fifth Revised Sheet No. 63
2nd Substitute Fifth Revised Sheet No. 64

Northern states that this filing is made in compliance with the Commission's Order issued July 1, 1997, in the above-referenced Dockets.

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 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. 97-19462 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-641-000]

Western Gas Resources, Inc.; Notice of Petition For Declaratory Order

July 18, 1997.

Take notice that on July 16, 1997, Western Gas Resources, Inc. (Western), 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP97-641-000 a petition for an order declaring that Western's acquisition of natural gas compression and treating facilities, with appurtenances, from Northern Natural Gas Company (Northern), will be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the commission and open to public inspection.

It is stated that Western owns and operates the Ellenberger Gathering System and the Devonian Gathering System, located in the Puckett Field producing area of southwestern Texas. It is stated that the Ellenberger system gathers raw, unprocessed gas from 20 low pressure wells for initial delivery into a natural gas liquids processing plant, then into a carbon dioxide removal and treating facility, and ultimately into Northern's adjacent transmission mainline. It is stated that the Devonian system gathers a raw gas stream flowing from 9 Puckett Field wells for initial delivery into a hydrogen sulfide removal and treating facility and ultimately into Northern's mainline.

Western maintains that the wells on the Ellenberger and Devonian systems generally produce at pressures of 125 psig or less, and wellhead or field compression must often be utilized to boost pressures up to as much as 300 psig. Western states that further compression, however, is necessary to enable efficient delivery of these gas streams through the related plant and treatment facilities and into the much higher pressure Northern mainline, which operates at 650 psig. Western states that the compression is provided to the Ellenberger gas, by two 2,000 horsepower compressor units having a suction pressure of 250 psig and a discharge pressure of 875 psig and provided to the Devonian stream by two 531 horsepower compressor units having a suction pressure of 75 psig and a discharge pressure of 675 psig. Western states that these compressor units are currently owned by Northern. Western states that it has agreed to purchase the four compressor units and

treating facilities from Northern following Northern's abandonment of such facilities in related Docket No. CP97-609-000. Western further states that, thereafter, the facilities will become an integral part of Western's two Puckett Field gathering systems.

Western states in its petition that it seeks a declaration from the Commission that the four compressor units, totaling 5,062 horsepower, treating facilities and appurtenances, located in Pecos County, Texas, which Western proposes to acquire from Northern, are gathering facilities.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 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). 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.

Lois D. Cashell,
Secretary.

[FR Doc. 97-19453 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-238-000 and CP96-347-000]

Maritimes & Northeast Pipeline, L.L.C., Portland Natural Gas Transmission System; Granite State Gas Transmission, Inc.; Notice of Availability, Final Environmental Impact Statement, PNGTS/Maritimes Phase I Joint Facilities Project

July 18, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Final Environmental Impact Statement (FEIS) on natural gas pipeline facilities proposed by Maritimes & Northeast Pipeline, L.L.C. and Portland Natural Gas Transmission System in the above-referenced docket. The FEIS also includes certain facilities to be abandoned by Granite State Gas Transmission Inc. in the above-referenced docket. The specific facilities addressed in this FEIS are referred to as the PNGTS/Maritimes Phase I Joint

Facilities Project (Phase I Joint Facilities).

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- about 66.1 miles of 30-inch-diameter mainline between Dracut, Massachusetts and Wells, Maine;
- about 0.8 mile of 20-inch-diameter pipeline (Haverhill Lateral);
- about 1.1 miles of 16-inch-diameter pipeline (Newington Lateral);
- five meter stations, three taps, and other associated aboveground facilities; and
- abandonment of 15.3 miles of 6-inch-diameter pipeline and two 375 horsepower compressor units in Massachusetts and New Hampshire.

The FEIS will be used in the regulatory decision-making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208-1371.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208-1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97-19451 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-43-000]

ANR Pipeline Company; Notice of Informal Settlement Conference

July 18, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, July 28, 1997, at 10:30 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208-0248.

Lois D. Cashell,

Secretary.

[FR Doc. 97-19455 Filed 7-23-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Notice of Cases Filed With the Office of Hearings and Appeals

Week of June 23 Through June 27, 1997

During the Week of June 23 through June 27, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: July 15, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of June 23 through June 27, 1997]

Date	Name and location of applicant	Case No.	Type of submission
6/23/97	Tri-State Drilling, Inc., Hamel, Minnesota	VFA-0304	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by Bonneville Power Administration would be rescinded, and Tri-State Drilling would receive access to certain DOE information.
6/24/97	Graves Construction, Santa Barbara, CA	RR272-299	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The November 15, 1996 Dismissal, Case No. RG272-757, issued to Graves Construction would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.
6/25/97	Personnel Security Hearing	VSO-0163	Request for Hearing Under 10 C.F.R. Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 97-19535 Filed 7-23-97; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; With the Office of Hearings and Appeals—Week of June 16 through June 20, 1997

During the Week of June 16 through June 20, 1997, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and

Appeals, Department of Energy, Washington, DC 20585-0107.

Dated: July 15, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF ENERGY
[Week of June 16 through June 20, 1997]

Date	Name and location of applicant	Case No.	Type of submission
6/16/97	EG&G, Denver, CO	VWZ-0008	Motion for Partial Dismissal. If granted: The underlying complaint in Case No. VWA-0016 would be dismissed in part.
6/18/97	Cortland Bulk Milk Producers, Cortland, NY	RR272-297	Request for Modification/Recession in the Crude Oil Refund Proceeding. If granted: The May 28, 1997 Dismissal, Case No. RG272-868, issued to Cortland Bulk Milk Producers would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
6/19/97	Personnel Security Hearing	VSO-0161	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
6/19/97	Personnel Security Hearing	VSO-0162	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 97-19536 Filed 7-23-97; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of June 9 Through June 12, 1997

During the Week of June 9 through June 12, 1997, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be

filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585-0107.

Dated: July 15, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF ENERGY
 [Week of June 9 through June 12, 1997]

Date	Name and location of applicant	Case No.	Type of submission
6/9/97	Greenville Automatic Gas Co., Inc., Greenville, TX.	VER-0002	Request for Modification/Rescission. If granted: The May 22, 1997 Decision and Order, Case No. VEE-0043, issued to Greenville Automatic Gas Co., Inc. would be modified regarding the firm's request for relief from the DOE reporting requirements.
6/9/97	Mary J. (Griffin) Barnett, Hartselle, AL	VFA-0303	Appeal of an Information Request Denial. If granted: The May 22, 1997 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Mary J. (Griffin) Barnett would receive access to certain DOE information.
6/9/97	Pedro Aponte Vasquez, San Juan, PR	VFA-0302	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Pedro Aponte Vasquez would receive access to certain DOE information.
6/9/97	Personnel Security Hearing	VSO-0160	Request for hearing under 10 CFR Part 710. If granted: An individual employed by a Department of Energy contractor would receive a hearing under 10 CFR Part 710.
6/12/97	Personnel Security Review	VSO-0123	Request for Review of Opinion under 10 CFR Part 710. If granted: The May 9, 1997 Opinion of the Office of Hearings and Appeals, Case No. VSO-0123, would be reviewed at the request of an individual employed by the Department of Energy.

[FR Doc. 97-19537 Filed 7-23-97; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY
Office of Hearings and Appeals
Notice of Cases Filed; Week of June 2 Through June 6, 1997

During the Week of June 2 through June 6, 1997, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and

Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: July 15, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
 [Week of June 2 through June 6, 1997]

Date	Name and location of applicant	Case No.	Type of submission
6/2/97	Internat'l Brotherhood of Electrical Workers, New Ellenton, South Carolina.	VFA-0299	Appeal of an Information Request Denial. If granted: The April 28, 1997 Freedom of Information Request Denial issued by Savannah River Operations Office would be rescinded, and Internat'l Brotherhood of Electrical Workers would receive access to certain DOE information.
6/2/97	Los Alamos Study Group, Santa Fe, New Mexico.	VFA-0298	Appeal of an Information Request Denial. If granted: The May 19, 1997 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Los Alamos Study Group would receive access to certain DOE information.
6/2/97	West Valley Farmers, Hardin, Kentucky	RR272-295	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The March 10, 1997 Decision and Order Case No. RF272-94614 issued to West Valley Farmers would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
6/5/97	Information Focus On Energy, Inc., Gaithersburg, Maryland.	VFA-0300	Appeal of an Information Request Denial. If granted: The May 19, 1997 Freedom of Information Request Denial issued by Ohio Field Office would be rescinded, and Information Focus on Energy, Inc. would receive access to certain DOE information.
6/5/97	Personnel Security Hearing	VSO-0159	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued
[Week of June 2 through June 6, 1997]

Date	Name and location of applicant	Case No.	Type of submission
6/6/97	Nevada Indian Environmental Coalition, Reno, Nevada.	VFA-0301	Appeal of an Information Request Denial. If granted: The April 18, 1997 Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Nevada Indian Environmental Coalition would receive access to certain DOE information.
6/6/97	Wales Transportation, Inc., Dallas, Texas	RR272-296	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The May 7, 1997 Denial Case No. RR272-291 issued to Wales Transportation, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
6/5/97	Personnel Security Hearing	VSO-0158	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
6/6/97	Tri-County F S, Inc., Jerseyville, Illinois	RR272-298	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The May 30, 1997 Decision and Order Case No. RG272-168 issued to Tri-County F S, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

[FR Doc. 97-15938 Filed 7-23-97; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice Of Cases Filed; Week of May 26 Through May 30, 1997

During the Week of May 26 through May 30, 1997, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and

Appeals, Department of Energy, Washington, D.C. 20585-0107.

Date: July 15, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of May 26 through May 30, 1997]

Date	Name and location of applicant	Case No.	Type of submission
5/27/97	Cal-Car Service Co., West Des Moines, Iowa.	RR272-294	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The May 14, 1997 Decision and Order, Case No. RG272-10, issued to Cal-Car Service Co. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
.....	5/28/97 H.C. Oil Co., Inc., Saint Louis, Missouri.	RR340-4	Request for Modification/Rescission in the Enron Refund Proceeding. If granted: The March 28, 1997 Decision and Order, Case No. RF340-1, issued to H.C. Oil Co., Inc. Would be modified regarding the firm's application for refund submitted in the Enron refund proceeding.
5/30/97	Personnel Security Review	VSA-0121	Request for Review of Opinion under 10 CFR Part 710. If granted: The April 30, 1997 Opinion of the Office of Hearings and Appeals, Case No. VSO-0121, would be reviewed at the request of an individual employed by the Department of Energy.

[FR Doc. 97-19539 Filed 7-23-97; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders; Week of June 23 Through June 27, 1997

Office of Hearings and Appeals

During the week of June 23 through June 27, 1997, the decisions and orders summarized below were issued with

respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234,

Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: July 15, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision List No. 39

Appeals

Patricia L. Baade, 6/27/97, VFA-0294

Patricia L. Baade (Appellant) filed an Appeal of a Determination issued to her by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). In the request, the Appellant asked for all documents pertaining to her that are in the possession of the DOE. In its Determination, the FOIA/Privacy Act Division found that the four departmental elements it searched did not have any responsive documents in their possession. In another Determination, the Office of Inspector General (OIG) found that because the Appellant had refused to supply certain identifying information or to complete DOE Form 1800.1, it could neither confirm nor deny that it possessed any records pertaining to the Appellant. On appeal, the Appellant argued that the DOE's search had been inadequate and

that she should get any documents in the OIG's possession since the OIG had distributed information from her files into the public domain. The Office of Hearings and Appeals (OHA) found that the search by the FOIA/Privacy Act Division had been inadequate, in terms of both departmental elements that had already been searched and elements that had been named by the Appellant yet never searched. However, the OHA upheld the OIG response. Even though the Appellant is apparently requesting records concerning herself, OIG was required to consider her as a third person requesting records about someone else because she failed to identify herself adequately. Further, the DOE found no evidence that the OIG had released information concerning the Appellant into the public domain. Therefore, the DOE granted in part and denied in part the Appeal.

Refund Applications

Enron Corp./Chevron U.S.A., Inc., 6/25/97, Case No. RF340-162

The DOE granted an Application for Refund submitted by Chevron U.S.A., Inc. (Chevron) in the Enron Corporation (Enron) special refund proceeding. The DOE found that Chevron had acquired the right to refund of three firms that had purchased product from Enron during the refund period. The DOE found that two of these firms were spot purchasers of Enron product, and that Chevron could not receive a refund based on these spot purchases. The DOE found that the third firm, Warren Petroleum Company (Warren), was a regular purchaser of products from two

Enron affiliates, UPG, Inc. and Florida Hydrocarbons Company. Accordingly, the DOE granted Chevron a refund based on Warren's purchases from these affiliates under the "mid-range" presumption of injury. Chevron's total refund, including interest, is \$83,235.

Enron Corp./Gulf States Oil & Refining Co., 6/24/97, RF340-93

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Enron Corporation (Enron) special refund proceeding concerning purchases from Enron made by Gulf States Oil & Refining Company (Gulf States). The DOE found that Gulf States was a reseller whose purchases from Enron apparently were made on the spot market, were sporadic and discretionary in nature, were not related to any of Gulf States' refining and marketing activities, and were not necessitated by business obligations to regular customers. Accordingly, the DOE found that Gulf States fit the spot market presumption of non-injury for resellers, and that the firm had not made a showing of injury to overcome this presumption. The DOE therefore denied the Application for Refund based on Gulf States' purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ARISTECH CHEMICAL CORP	RF272-78413	6/25/97
BAY STATE GAS CO. ET AL	RF272-98600	6/27/97
CRUDE OIL SUPPLEMENTAL REFUND DIST	RB272-00111	6/24/97
EMCO ELEVATORS, INC. ET AL	RF272-79198	6/27/97
HUNTER BROTHERS ET AL	RK272-2001	6/27/97
JAN HANSON ET AL	RK272-03505	6/25/97
LACLEDE CAB COMPANY	RK272-01403	6/27/97
NORMAN LUMPKIN ET AL	RF272-39710	6/25/97
PENNEBAKER EQUIPMENT CO. ET AL	RF272-86257	6/27/97
SAHUARITA UNIFIED DISTRICT 30 ET AL	RF272-79635	6/24/97
STARBUCK CREAMERY CO	RR272-286	6/27/97

Dismissals

The following submissions were dismissed.

Name	Case No.
CAL-CAR SERVICE COMPANY	RR272-294
PERSONNEL SECURITY HEARING	VSO-0140
PERSONNEL SECURITY HEARING	VSO-0156
PERSONNEL SECURITY HEARING	VSO-0157

[FR Doc. 97-19540 Filed 7-23-97; 8:45 am]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of June 16 Through June 20, 1997

During the week of June 16 through June 20, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: July 15, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 38

Appeals

Dennis J. McQuade, 6/17/97, VFA-0297

Boyer Construction, et al	RK272-03686	6/19/97
Conrey Munson, et al	RK272-03201	6/17/97
Crude Oil Supple Ref Dist	RB272-00107	6/17/97
Crude Oil Supple Ref Dist	RB272-00112	6/19/97
Crude Oil Supple Ref Dist	RB272-00113	6/19/97
Devine & Son Trucking Co., et al	RK272-01519	6/18/97
Duffy Storage & Moving	RG272-87	6/17/97
Essex Specialty Products	RG272-97	6/18/97
Fraiman Realty	RF272-67278	6/18/97
Frank B. Hall & Co., Inc./AON SVC Corp	RK272-04387	6/18/97
Morgan Cnty Svc Co	RG272-166	6/17/97
Scott Farm Services Inc	RG272-171	
Mount Carmel Public Utility Co	RF272-77400	6/19/97
Rockwell Drilling Co	RJ272-00044	6/20/97
Veterans Admin Medical Cntr	RF272-89296	6/17/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Fairmount Chemical Co	RG272-00530

[FR Doc. 97-19541 Filed 7-23-97; 8:45 am]

BILLING CODE 6450-01-P

The DOE denied an appeal of a determination issued by the Oak Ridge Operations Office denying a request for information filed under the Freedom of Information Act. OHA found that the search conducted by the Operations Office was reasonably calculated to uncover material responsive to the request.

James D. Hunsberger, 6/18/97 VFA-0267

James D. Hunsberger filed an Appeal from a denial by the Nevada Operations Office of a request for information that he filed under the Freedom of Information Act. In considering his arguments that Nevada did not undertake an adequate search for all responsive records, the DOE determined that Nevada's search was reasonable and proper. Accordingly, the Appeal was denied.

Los Alamos Study Group, 6/19/97 VFA-0298

Los Alamos Study Group (Appellant) filed an Appeal of a Determination issued to it by the Albuquerque Operations Office (AOO) in response to a request under the Freedom of Information Act (FOIA). In the request, the Appellant asked for Conceptual Design Plans (CDPs) for various projects, including the Los Alamos Neutron Science Center (LANSC). In its Determination, AOO found that a CDP did not exist for the LANSC. On appeal, the Appellant requested all documents that were the equivalent of a CDP for the LANSC. The DOE found that this request on Appeal was outside the

scope of the Appellant's initial FOIA request and accordingly denied the Appeal.

Personnel Security Hearing

Personnel Security Hearing, 6/17/97 VSO-0129

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because the DOE obtained derogatory information that the individual was a user of alcohol habitually to excess and was diagnosed by a board-certified psychiatrist as alcohol dependent. At a hearing convened at the individual's request, the individual maintained that he was not alcohol dependent. The Hearing Officer found that the individual did not support this position, and that he failed to present sufficient evidence of rehabilitation. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5863-2]

Agency Information Collection Activities Under OMB Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart J, OMB Control Number: 2050-0141. EPA Control Number: 1664.03. Expiration Date: August 31, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 25, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at (202) 260-2740 and refer to EPA ICR No. 1664.03.

SUPPLEMENTARY INFORMATION:

Title: The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart J (OMB Control Number 2050-0141; EPA ICR Number 1664.03); expiring 8/31/97. This is a request for extension of a currently approved collection.

Abstract: The use of dispersants, other chemical agents, and bioremediation agents to respond to oil spills in U.S. waters is governed by subpart J of the NCP (40 CFR 300.900). EPA's regulation, which is codified at 40 CFR 300.00, requires that EPA prepare a schedule of "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP." Under subpart J, respondents wishing to add a product to the Product Schedule must submit technical product data specified in 40 CFR 300.915 to EPA. EPA places oil spill mitigating products on the Product Schedule if all the required data are submitted. The Product Schedule is available to Federal On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees for determining the most appropriate products to use in various spill scenarios. Subpart J ensures that OSCs, RRTs, and Area Committees have necessary data regarding the toxicity,

effectiveness, and other characteristics of different products in order to make more informed decisions regarding the use of such products during time critical spill responses. Because local conditions may require additional information, RRTs may, under the revisions, require supplemental toxicity and effectiveness testing of products.

Section 300.920(c) allows respondents to assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 11, 1997 (62 FR 17801); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 27 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of dispersants, surface washing agents, surface collecting agents, bioremediation agents, and other chemical agents and biological additives used as countermeasures against oil spills.

Estimated Number of Respondents: 14 per year.

Frequency of Response: One time, on occasion.

Estimated Total Annual Hour Burden: 370 hours.

Estimated Total Annualized Cost Burden: \$99,857.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1664.03 and OMB Control No. 2050-0141 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 17, 1997.

Joseph Retzer,

Director Regulatory Information Division.

[FR Doc. 97-19547 Filed 7-23-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5863-1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Public Water Systems Annual Compliance Report**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Public Water Systems Annual Compliance Report, EPA ICR# 1812.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 25, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1812.01

SUPPLEMENTARY INFORMATION:

Title: Public Water Systems Annual Compliance Report, EPA ICR No. 1812.01. This is a new collection.

Abstract: States and Territories are required to prepare for EPA by January 1, 1998, a detailed report with Executive Summary on drinking water violations. EPA is to then take the information prepared by the States and Territories and prepare a national report that aggregates the information collected from the States and Territories as well as reports on Indian Tribes information. EPA is to make recommendations to remedy problems associated with drinking water violations in the States, Territories, and Indian Lands. This activity is required under section 1414(c)(3) of the Safe Drinking Water Act to ensure compliance and public safety. The information reported by the States and Territories is required under the Safe Drinking Water Act. States are required to prepare a report that lists violations in the following four categories: Maximum Contaminant Levels, Treatment Techniques, Variances and Exemptions, and Monitoring violations considered to be significant. EPA is to then take this information and prepare the national report summarizing the information reported. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/8/97 (62 FR 25189); 1 comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 208 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and Territories.

Estimated Number of Respondents: 55.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 11,440 hours.

Estimated Total Annualized Cost Burden: \$682,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1812.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: July 17, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97-19548 Filed 7-23-97; 8:45 am]

BILLING CODE 6560-50-P 1

FEDERAL COMMUNICATIONS COMMISSION
Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 11, 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 25, 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., N.W., 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: 3060-0763.

Title: ARMIS Customer Satisfaction Report.

FCC Report No.: FCC 43-06.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 8.

Estimated Time Per Response: 900 hours.

Cost to Respondents: N/A.

Total Annual Burden: 7,200 hours.

Needs and Uses: FCC Report 43-06, the Customer Satisfaction Report, reflects the results of customer satisfaction surveys conducted by individual carriers from residential and business customers on installation and repair orders. The information contained in the automated reports provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data that are needed to administer its rules. Automating and organizing data submitted to the Commission facilitate the timely and efficient analyses of revenue requirements, rate of return and price caps, and satisfaction surveys of customer installation and repair requests, and to provide an improved basis for auditing and other oversight functions and enhance the Commission's ability to quantify the effects of policy proposals.

OMB Approval Number: 3060-0414.

Title: Terrain Shielding Policy.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit; not-for-profit institutions; state, local, or tribal government.

Number of Respondents: 300.

Estimated Time Per Response: 10 hours.

Cost to Respondents: A consulting engineer would prepare the terrain shielding waiver request. This consulting engineer is estimated to have an average salary of \$125/hour. Therefore, 300 waiver requests x 9 hours x @125/hour=\$337,500.

Total Annual Burden: 300 hours.

Needs and Uses: The terrain shielding policy requires low power television applicants to submit: detailed terrain studies; or assent of potentially affected parties and graphic depiction of terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. The data are used by FCC staff to determine if adequate protection can be provided by terrain shielding and if waiver of rules is warranted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-19429 Filed 7-23-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Statement of Policy for Participation in the Conduct of the Affairs of an Insured Depository Institution by Persons Who Have Been Convicted or Have Entered Pretrial Diversion Programs Pursuant to Section 19 of the Federal Deposit Insurance Act

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed policy statement.

SUMMARY: The FDIC seeks to update its statement of policy concerning the participation in banking of a person convicted of a crime of dishonesty or breach of trust or money laundering or who has entered a pretrial diversion or similar program in connection with the prosecution for such offense pursuant to section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829. Section 19 was significantly expanded by the Financial Institutions Reform, Recovery

and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, 103 Stat. 183 (1989), and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 ("Crime Control Act"), Pub. L. 101-647, 104 Stat. 4789 (1990) and as a result the two existing statements of policy on this provision are outdated. The FDIC intends to adopt the new Statement of Policy and rescind the two existing ones. The FDIC is seeking comments on the proposed Statement of Policy by issuing this **Federal Register** notice.

DATES: Comments must be received on or before September 22, 1997.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898-3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Division of Supervision, (202) 898-6915; or Nancy L. Alper, Counsel, Legal Division, (202) 736-0828, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 significantly expanded the provisions of section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829. As amended by FIRREA and the Crime Control Act, section 19 now prohibits, without the prior consent of the FDIC, a "person" convicted of a criminal offense involving dishonesty, breach of trust or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from owning or controlling directly or indirectly an insured depository institution, becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured depository institution. Further, section 19 now provides that

conviction for certain enumerated violations of Title 18 of the United States Code pertaining to financial institution-related crimes precludes the FDIC for ten years from considering or consenting to an application filed by a person convicted of such an offense, unless an exception is granted by the sentencing court.

Request for Comments.

The FDIC has received many inquiries regarding what constitutes "participation" and who is a "person." This request for comments is intended to provide an opportunity to comment on the proposal. In general, the FDIC is interested in comments on the following: the scope of section 19, including what constitutes "participation, directly or indirectly, in the conduct of the affairs," what comprises "own or control, directly or indirectly, any insured depository institution;" whether the current interpretations of "dishonesty" or "breach of trust" should be changed or clarified; criteria for determining what constitutes offenses involving dishonesty, money laundering or breach of trust; procedures for filing a section 19 application, including whether a section 19 application should be filed where there is a *de minimis* crime (e.g., juvenile offense of theft) and what would constitute a *de minimis* crime; what duty to inquire should be imposed upon insured depository institutions, including what due diligence should be undertaken by insured depository institutions in determining what persons come within the parameters of section 19; and the standards for granting consent to a section 19 application.

In particular, the FDIC would like comments on the following areas. First, the FDIC is requesting comments on its longstanding policy of requiring an insured depository institution to file a section 19 application on behalf of an individual. The rationale for this policy has been that in determining whether to approve a section 19 application, the FDIC must assess whether the person's participation in the insured institution constitutes a risk to the safety and soundness of the institution or whether the person's participation in the institution threatens to impair public confidence in the institution or the banking system in general. In making its determination, the FDIC traditionally has considered the position which the person will occupy in the institution, the extent of the supervision of the person which the institution provides, the size and condition of the institution, and fidelity bond coverage of the person

by the institution's insurance company. Where an individual is filing a section 19 without the benefit of bank sponsorship, the FDIC may not have information concerning what institution may employ that individual when making its determination to approve the section 19 application. Further, the FDIC may be put in the position of processing section 19 applications filed by persons who either may have no prospect of employment with a financial institution or have no sincere interest in such employment but who are simply seeking certification from an agency of the federal government in order to gain employment elsewhere. In light of these issues, the FDIC is seeking comments specifically on the following: whether a non-bank applicant may file a Section 19 application and, if so, under what circumstances should it be permitted; what the scope of the approval granted in these situations should be; and how the FDIC should implement the new procedures in a manner to promote the safety and soundness of the insured institution.

Another area for which the FDIC seeks comments is whether the definitions of "own" or "control" are sufficient. Specifically, the FDIC has used the definition of "control" as set forth in the Change in Control Act, 12 CFR part 225. The FDIC is requesting comments on whether the use of this definition is appropriate or whether the definition should be expanded. Further, the FDIC seeks comments on how to distinguish "control" from the definition of "own" without leading to the absurd result of requiring a convicted person who owns one share or ten shares of stock in a large publicly traded insured institution from having to divest his or her ownership interest.

A third area for which the FDIC is requesting comments concerns what guidelines should be implemented to determine whether independent contractors come within the definitions of indirect participation. For example, some independent contractors provide data processing services and have access to extremely sensitive bank data but may perform such services offsite, while other contractors may be loan brokers who bring loans to a bank but do not have any decision making authority about obtaining bank approval. A related issue is whether officers and directors of a diversified holding company (that is, a company not solely involved in financial institution activities) should come within the parameters of section 19, and if so, what guidelines should be implemented to make such a determination. Elements of this issue may involve the relation

between the size of the parent holding company and the insured depository institution (does the insured institution represent one percent of the holding company's business or 75% of the business) and where the insured institution fits into the overall structural organization of the holding company's business.

The FDIC recognizes that Section 19 and the proposed Policy Statement interpreting Section 19 would impose burdens upon insured depository institutions and those parties dealing with the institutions. For example, insured institutions would be required to determine the criminal backgrounds of temporary employees hired through a temporary employment service. The FDIC, however, believes that such burdens are compelled by the statutory language of section 19. The FDIC is interested in legal analyses which will assist it in devising policies which will reduce the burden upon insured depository institutions which the FDIC believes is imposed by the statute. The FDIC will use the comments and the legal analyses received to develop a final statement of policy.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to revise its Statement of Policy regarding applications under section 19 of the FDI Act as follows:

FDIC Statement of Policy for Section 19

Section 19 of the Federal Deposit Insurance Act prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered criminal offenses), or who has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense from being an institution-affiliated party, owning or controlling directly or indirectly an insured depository institution, or otherwise participating, directly or indirectly, in the conduct of the affairs (collectively, participating in the affairs) of an insured depository institution (insured institution).

Section 19 is a statutory bar to participation. The purpose of an application is to provide an opportunity to an applicant to demonstrate that, notwithstanding the bar, an individual is fit to participate in the conduct of the affairs of an insured institution without posing a risk to the safety or soundness of the insured institution or impairing public confidence therein. The burden is upon the applicant to establish that the application warrants approval. An application may be approved because

the person will not be in a position to constitute a risk to the institution. A person who will occupy clerical, maintenance, or service positions, or in some instances, administrative or teller positions, generally falls into this category. Such an application will not normally require an extensive review. A more detailed analysis will be performed in the case of a person who would be in a position to control or influence the conduct of the affairs of the insured institution.

A. Scope of Section 19

(1) General

Upon conviction or program entry without the prior written consent of the FDIC, a person is automatically by operation of law prohibited from: (i) Becoming or continuing as an institution-affiliated party; (ii) owning or controlling directly or indirectly an insured institution; or (iii) participating, directly or indirectly, in the conduct of the affairs of an insured institution. Additionally, such a person employed by an insured institution's holding company or an affiliate, subsidiary or joint venture of an insured institution or of its holding company may be prohibited from continuing such employment without the prior written consent of the FDIC where such person is engaged in performing banking or banking related activities on a regular and material basis. Person, for purposes of section 19, means a natural person and does not include a corporation, firm, or other business entity.

(2) Controlling Shareholder or Control Group Member

A controlling shareholder or a member of a control group of an insured institution may not without the prior written consent of the FDIC engage in the following conduct: (i) Exercise any voting rights in any shares of stock of the insured institution or its holding company; (ii) own or control such shares of stock so as to result in owning or controlling, directly or indirectly, the largest percentage of shares in the insured institution; (iii) control such shares of stock so as to result in controlling the management or policies of an insured institution; (iv) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any insured institution; or (v) modify or set aside any voting agreement previously approved by the appropriate federal banking agency.

(3) Independent Contractor

In determining whether an application is required for an independent contractor's participation in the conduct of the affairs of an insured institution, an analysis is required of the nature and scope of the person's proposed activity. Participation by an independent contractor, or an employee of an independent contractor, would occur where either is performing banking or banking related activities on behalf of, or for the benefit of, an insured institution on a regular and material basis so as to be involved in the ordinary course of operations of the institution or to be exercising control over such operations.

B. Criteria for Evaluating Conduct Requiring a Section 19 Application

The conviction of or program entry by any adult or minor treated as an adult by a court of competent jurisdiction will require an application to be submitted to the FDIC for prior written consent before engaging in banking activities.

(1) Convictions

There must be present a conviction of record. Arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal are excluded from the requirements of section 19. A conviction which is being appealed will require an application until or unless reversed. A conviction, which has been expunged or for which a pardon has been granted, requires an application.

(2) Pretrial Diversion or Similar Program

Program entry as determined by federal, state or local law, may be formal or informal in nature and is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution or other noncriminal or nonpunitive alternatives. Included in this definition are programs where the accused agrees to authorize a corporate entity under his control to plead guilty and the accused may make some monetary payment.

(3) Dishonesty or Breach of Trust

A conviction or program entry includes felonies, misdemeanors, and other criminal offenses as determined by federal, state or local law, wherein dishonesty or breach of trust or money laundering is involved. Dishonesty is defined to mean to directly or indirectly cheat or defraud; or to cheat or defraud for monetary gain or its equivalent; or to wrongfully take property lawfully belonging to another in violation of any

criminal statute or code. Acts of dishonesty are further defined to include, but are not limited to, such acts which involve want of integrity, lack of probity, or involve a disposition to distort, defraud, cheat or to act deceitfully or fraudulently. Furthermore, dishonesty may also include crimes which by Federal, state, or local criminal statutes and codes are defined as dishonest. Breach of trust is defined to mean a wrongful act or use, misappropriation, omission with respect to any property or fund which has been lawfully committed to a person in a fiduciary or official capacity, or the abuse of one's official position or fiduciary relationship to engage in a wrongful act, use, or omission.

(4) Drug Offenses

All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application. A controlled substance shall mean those so defined by federal law whether the conviction is by a federal or state court. Conviction of or program entry by any adult or minor for use of a controlled substance does not per se constitute crimes involving dishonesty or breach of trust or money laundering. However, the circumstances of the offense may contain elements of dishonesty or breach of trust or money laundering as the FDIC traditionally has applied these terms to section 19. The FDIC will determine, on a case-by-case basis, whether an application is required and whether to withhold consent from a person convicted of such an offense.

(5) Youthful Offender Adjudgments

Adjudgment by a court against a person as a "youthful offender" under any youth offender law or adjudgment as a "juvenile delinquent" by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses.

C. General Procedures To Be Followed By An Insured Institution and Person With Respect To A Section 19 Application

Section 19 imposes a duty upon the insured institution to make a reasonable inquiry into whether a person has a conviction or program entry with respect to a covered criminal offense. Reasonable inquiry requires the insured institution to take steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by

a person who has a conviction or program entry for a covered criminal offense. In certain circumstances, an insured institution may believe that undertaking a minimal inquiry is not necessary. The FDIC believes that at a minimum each insured institution should establish a screening process which provides the insured institution with information concerning any previous or present convictions or program entries that a job applicant may have.

For example, a reasonable inquiry that would satisfy the requirements of Section 19 and is consistent with industry practices includes the following: (1) The completion of a written employment application which requires listing any and all previous convictions or program entries; (2) the fingerprinting and processing of fingerprints of any person prior to his or her participation in the affairs of an insured institution; and (3) periodic inquiry to determine whether a person is the subject of a conviction or program entry. This is not a requirement imposed by the FDIC and alternatives may be employed. However, the FDIC will look at the circumstances of each situation to determine if the inquiry is reasonable. Upon notice of a previous or present conviction or program entry for a covered criminal offense, the insured institution must seek the consent of the FDIC prior to the person's participation, or the person's continued participation.

When an application is required, forms and instructions should be obtained from and the application filed with the appropriate FDIC Regional Director. The application must be filed by an insured institution on behalf of the person, except where the person is a shareholder seeking to exercise voting rights and the insured institution has refused to file an application on his behalf. If a person currently employed by an insured institution is discovered to have a conviction or program entry, upon request, the Regional Director may in his discretion grant a conditional approval pending the processing of the application.

D. Criteria for Evaluation of Section 19 Applications

The essential criteria in assessing an application for consent are: (1) Whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution; and (2)(i) whether the affiliation, ownership, control, or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety or soundness of the insured institution or the interest of its

depositors; or (ii) whether the affiliation, ownership, control, or participation may threaten to impair public confidence in the insured institution.

Important considerations in determining the risk to the insured institution are the following factors: (i) The conviction or program entry for a covered criminal offense and the specific nature of the offense involved and the circumstances surrounding it; (ii) the evidence of rehabilitation since the date of the conviction, parole, or suspension of sentence, including the reputation of the person since the conviction, the age of the person at the time of the conviction, and the time elapsed since the conviction; (iii) the position to be held by the person in the insured institution and/or the type of participation to be engaged in directly or indirectly in the conduct of the affairs of the insured institution by the person; (iv) the amount of influence and control the person will be able to exercise over the affairs and operations of the insured institution; (v) the ability of management at the insured institution to supervise and control the activities of the person; (vi) the level of ownership which the person will have at the insured institution; (vii) the applicability of the insured institution's fidelity bond coverage to the person; (viii) the opinion or position of the primary Federal and/or state regulatory agency; and (ix) any additional factors in the specific case that appear relevant.

These criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to the expiration date for a person convicted for the commission of, or the conspiracy to commit, one of the enumerated violations of Title 18 set forth in section 19.

Approval orders in section 19 cases will generally be subject to the condition that the person shall be bonded to the same extent as others in similar positions. When deemed appropriate, approval orders may also be made subject to the condition that the prior consent of the FDIC shall be required for any proposed significant changes in the duties and/or responsibilities of the person. Such proposed changes may in the discretion of the Regional Director require a new application. In situations where a person has been approved under a section 19 action for participation in one insured institution and subsequently seeks to participate in another insured institution, approval

does not automatically follow. In such cases, another application must be submitted to the FDIC to determine whether approval should be granted.

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of June 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97-19550 Filed 7-23-97; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, July 29, 1997, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26 U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 31, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Report of the Audit Division on Pete Wilson for President Committee (originally scheduled for the meeting of July 17, 1997).

Advisory Opinion 1997-10: Hoke for Congress Committee by counsel, Patrick J. Alcox.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer.
Telephone: (202) 219-4155.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97-19612 Filed 7-22-97; 10:33 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 202-011579.

Title: The Inland Shipping Service Association.

Parties:

Crowley American Transport, Inc.,
Dole Ocean Liner Express.,
King Ocean,
A.P. Moller-Maersk Line,
Sea-Land Service, Inc.,
Seaboard Marine, Ltd.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720), has requested additional information from the parties to the Agreement in order to complete its required statutory review of the Agreement. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: July 18, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97-19443 Filed 7-23-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

American Cargo Express, Inc., 435 Division Street, Elizabeth, NJ 07201,
Officers: Christina Trizano, President,
Richard Trizano, Vice President
First USA R.E., Inc. d/b/a USA Trade,
2172 Dupont Drive, Suite 3, Irvine,
CA 92612, Officer: Nicholas
AbouFadel, Owner
CAP Worldwide, Inc., 3126 Airfreight
Road, Bldg. 2, Suite 200, Houston, TX
77032, Officers: Gayle Dendinger,
Leanne Moore, Vice President
Gulf Shipping & Trading Group, 5881
Leesburg Pike, Suite #301, Falls
Church, VA 22041, M Ahmed M.
Hossain, Sole Proprietor

Dated: July 18, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97-19423 Filed 7-23-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Wachovia Corporation*, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of Jefferson Bankshares, Inc., Charlottesville, Virginia, and thereby indirectly acquire Jefferson National Bank, Charlottesville, Virginia.

Board of Governors of the Federal Reserve System, July 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-19436 Filed 7-23-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BB&T Corporation*, Winston-Salem, North Carolina; to acquire Virginia First Financial Corporation, Petersburg, Virginia, and thereby indirectly acquire Virginia First Savings Bank, F.S.B., Petersburg, Virginia, and thereby engage in mortgage banking, and operating a savings and loan association, pursuant to §§ 225.28(b)(1) and (4) of the Board's Regulation Y. Comments on this application must be received by August 18, 1997.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *First National Bancshares, Inc.*, East Lansing, Michigan; to engage *de novo* through its subsidiary, Finance Company of North America, LLC, East Lansing, Michigan, in making and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-19435 Filed 7-23-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13¾% for the quarter ended June 30, 1997. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 15, 1997.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 97-19491 Filed 7-23-97; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Publication of Recommendations Relating to HIPAA Health Data Standards

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: Section 1172(f) Subtitle F of Pub. L. 104-191, the Health Insurance Portability and Accountability Act of 1996, requires the Secretary of Health and Human Services to publish in the **Federal Register** any recommendation of the National Committee on Vital and Health Statistics (NCVHS) regarding the adoption of a data standard under that

law. Accordingly, the full text of the initial set of NCVHS recommendations relating to HIPAA data standards is reproduced below. The text of the recommendations is also available on the NCVHS website: <http://aspe.os.dhhs.gov/ncvhs/>. The executive summary of the NCVHS recommendations to HHS relating to health information privacy and confidentiality is also reproduced below. The full text of the NCVHS privacy report is available on the NCVHS website.

SUPPLEMENTARY INFORMATION: Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1966 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified administrative health care transactions to enable information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses and health care providers who choose to conduct these transactions electronically must comply with these standards. Further, the law requires the Secretary to submit to Congress detailed recommendations on standards with respect to the privacy of individually identifiable health information. In preparing these reports and recommendations, the Secretary is required to consult with the NCVHS, the statutory public advisory body to HHS on health data, privacy and health information policy. On June 27, 1997, the Committee submitted a set of initial recommendations relating to health data standards. In accordance with the law, the full text of the recommendations is published below. The executive summary of the NCVHS privacy report also is reproduced below.

Recommendations Relating to the National Provider Identifier

The Honorable Donna E. Shalala,
Secretary of Health and Human Services,
200 Independence Avenue, SW.,
Washington, DC 20201.

Dear Secretary Shalala: On behalf of the National Committee on Vital and Health Statistics (NCVHS), I am pleased to forward to you our recommendations relating to the first of the health data standards being proposed for adoption in accordance with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA outlines a new approach to the adoption of data standards to support electronic data interchange in the health industry in the United States, in a framework that protects the privacy and security of health information. The law assigns to you the responsibility for adopting such standards by

February 1998. It also asks you to provide detailed recommendations to Congress with respect to the privacy of individually identifiable health information by next August. The NCVHS is very pleased to provide support, advice and consultation to you in this effort.

To assist in carrying out our advisory responsibilities to you, the NCVHS, in collaboration with HHS, has held a number of public hearings to obtain input and advice from throughout the health industry, State government, and the research and public health communities. The first of the health data standards to be proposed for adoption is the unique identifier for health providers, which HHS has had under development for some time and which we understand is planned for **Federal Register** publication in July for review and comment.

The NCVHS has been briefed on the proposal for the National Provider Identifier (NPI), and we offer our strong support. The proposal includes an eight digit alphanumeric identifier that would be assigned to all providers, along with essential identifying information. The identifier includes a check digit and contains no embedded intelligence. We recommend that HHS proceed to publish the proposal for public comment without delay. While public comments are likely on the technical details of the number and the optimal approach to enumeration, we have found broad support for the proposal in general and urge you to proceed.

The Committee did identify one concern that we bring to your attention. The NPI, like all of the subsequent standards to be adopted, should be conceived of as a generic industry-wide standard and it should not contain any requirements that are specific to individual programs—government programs or otherwise. It is our understanding that information about HHS Inspector General sanctions against providers is being considered as part of the NPI system.

We believe that this approach undermines the principle of a generic industry-wide standard and makes the successful implementation of the first standard needlessly difficult and controversial. While we are supportive of HHS efforts to prevent and detect health care fraud and abuse, we strongly recommend against the inclusion of sanctions information as part of the NPI system itself. The OIG provider sanctions information is already public, and it can be further publicized in other ways. We do agree that the use of the NPI to facilitate access to health care fraud and abuse information in other data systems is both appropriate and consistent with the intent of the statute.

We appreciate your national leadership in health data standards, electronic data interchange and privacy, and we are privileged to work with you on these issues.

Sincerely,

Don E. Detmer, M.D.,
Chairman.

Recommendations Relating to Transaction Standards

The Honorable Donna E. Shalala,

Secretary of Health and Human Services, 200
Independence Avenue, SW, Washington,
DC 20201.

Dear Secretary Shalala: On behalf of the National Committee on Vital and Health Statistics (NCVHS), I am pleased to forward to you our recommendations relating to some of the health data standards being proposed for adoption in accordance with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As you are aware, HIPAA outlines a new approach to the adoption of data standards to support electronic data interchange in the health industry in the United States, in a framework that protects the privacy and security of health information. The law assigns to you the responsibility for adopting such standards by February 1998. It also asks you to provide detailed recommendations to Congress with respect to the privacy of individually identifiable health information by next August. The NCVHS is very pleased to provide support, advice, and consultation to you in this effort.

To assist in carrying out our advisory responsibilities to you, the NCVHS, in collaboration with HHS, has held a number of public hearings to obtain input and advice from throughout the health industry, State government, and the research and public health communities. We have heard a great deal of input from the private and public sectors, and have synthesized that input into the following recommendations regarding the administrative simplification standards.

Administrative Transaction Messages

The NCVHS recommends that you adopt the following standards for transmission of administrative and financial transactions. In addition, we recommend that you specify the acceptable versions and implementation guides for these standards at the time the final rules are issued.

*Health Claims * or Equivalent Encounter Information*

Pharmacy—NCPDP Telecommunications
Standard Format
Institutional—ASC X12N Health Care Claim
(837)
Professional—ASC X12N Health Care Claim
(837)
Dental—ADA Implementation Guide for ASC
X12N 837
* The X12N standard for claims includes
standard information for coordination of
benefits.

Enrollment and Disenrollment in a Health Plan

ASC X12N Benefit Enrollment and
Maintenance (834)

Eligibility for a Health Plan

ASC X12N Health Care Eligibility/Benefit
Inquiry (270)
ASC X12N Health Care Eligibility/Benefit
Information (271)

Health Care Payment and Remittance Advice

ASC X12N Health Care Claim Payment/
Advice (835)

Health Care Premium Payments

- ASC X12N Consolidated Service Invoice/
Statement (811)
ASC X12N Payment Order/Remittance
Advice (820)

First Report of Injury

- ASC X12N Report of Injury, Illness or
Incident (148)

Health Claim Status

- ASC X12N Health Care Claim Status Request
(276)
ASC X12N Health Care Claim Status
Notification (277)

Referral Certification and Authorization

- ASC X12N Health Care Service Review
Information (278)

The adoption of a standard for claim attachments is not due until next year, so we will make a timely recommendation for that transaction at a later time.

Although we recommend that institutional and professional claims should move to the ANSI X12N 837 standard, we recommend a strategy to ease the transition for providers and payers that currently rely on the older NSF or UB92 flat-file formats for electronic claims submissions. We have learned at the hearings that the financial health of providers is extremely sensitive to the timing of payments for claims submitted. As a result, there is some fear in the industry that pushing this transition to the 837 too rapidly could lead to financial failures if payments were delayed because of technical problems during the conversion. We recommend a transition strategy whereby willing trading partners, by mutual agreement, could continue to use existing flat-file mechanisms (NSF and UB92) to exchange claim transactions until February, 2002. Strict adherence to section 1175 of HIPAA (which forbids plans from refusing standard transactions or delaying payment on the grounds that a transaction is standard) will be expected and should be enforced.

Transaction Data Content

The Committee has a long history of national leadership on health data content issues. We will review the information now being collected by HHS in the master data dictionary of transaction data elements and, once that is available, will formulate our recommendations. The Committee's recommendations on data content also will include specific recommendations for a process for changing, maintaining, and updating the standard data content specifications for the above administrative transactions. As part of our ongoing responsibilities, we will continue to advise you on the need for new data elements, as well as deletions and modifications to current data elements, for health care transactions.

At this time, we would like to make specific recommendations about several data elements. In a previous communication, we endorsed HCFA's NPI proposal for a unique identifier for providers. The Committee would like to endorse the HCFA proposed Payer ID as the national standard for the payer identifier. A recommendation on the

individual identifier may follow, after the Committee has had opportunity to review and discuss the commissioned report on this topic.

The Committee recommends that diagnosis and procedure coding continue to use the current code sets because replacements will not be ready for implementation by the year 2000. ICD-9-CM diagnosis codes, ICD-9-CM Volume 3 procedure codes, and HCPCS (including CPT and CDT) procedure codes should be adopted as the standards to be implemented by the year 2000. Annual updates to ICD-9-CM and HCPCS should continue to follow the schedule currently used. In addition, we recommend that you advise industry to build and modify their information systems to accommodate a change to ICD-10-CM diagnostic coding in the year 2001 and a major change to a unified approach to coding procedures (yet to be defined) by the year 2002 or 2003. We recommend that you identify and implement an approach for procedure coding that addresses deficiencies in the current systems, including issues of specificity and aggregation, unnecessary redundancy, and incomplete coverage of health care providers and settings. The committee will continue its leadership and participation in this endeavor.

Security Standards

Security standards will be recommended by the Committee after hearings are held on this topic. These hearings are currently scheduled for August.

We appreciate your national leadership in health data standards, electronic data interchange and privacy, and we are privileged to work with you on these issues.

Sincerely,
Don E. Detmer, M.D.,
Chairman.

Recommendations Relating to Privacy

The Honorable Donna E. Shalala,
*Secretary of Health and Human Services, 200
Independence Avenue S.W., Washington,
D.C. 20201.*

Dear Secretary Shalala: On behalf of the National Committee on Vital and Health Statistics (NCVHS), I am pleased to forward to you our recommendations relating to health information privacy. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires you to provide detailed recommendations to the Congress with respect to the privacy of individually identifiable health information by August 1997. The law also directs you to consult with the NCVHS in developing your recommendations. The enclosed report is submitted in support of this responsibility.

In developing our recommendations to you for health information privacy, the NCVHS Subcommittee on Privacy and Confidentiality held six full days of public hearings during which we heard from 43 witnesses from the industry, privacy community, State government, and public health and research communities. We also benefited from two additional days of public hearings in San Francisco where we heard from an additional 40 witnesses from across the health industry

spectrum, including a number of representatives from the privacy and patient advocacy community.

The NCVHS recommends that you and the Administration assign the highest priority to the development of a strong position on health privacy. The NCVHS also recommends that the 105th Congress enact a health privacy law before it adjourns in the fall of 1998.

We appreciate your leadership on health information privacy, and offer our continuing assistance in addressing this national issue.

Sincerely,
Don E. Detmer, M.D.,
Chairman.
Enclosure

Health Privacy and Confidentiality Recommendations of the National Committee on Vital and Health Statistics*Executive Summary*

The Health -Insurance Portability and Accountability Act requires the Secretary of Health and Human Services to consult with the National Committee on Vital and Health Statistics when developing recommendations on standards for the protection of the privacy of individually identifiable health information. This report is the Committee's advice to the Secretary.

The Committee finds that the United States is in the midst of a health privacy crisis. Patients must feel comfortable in communicating sensitive personal information. Delays in passing privacy legislation will allow additional and uncontrolled uses of health information to develop.

The Committee recommends that the Secretary and the Administration assign the highest priority to the development of a strong position on health privacy that provides the highest possible level of protection for the privacy rights of patients. The Committee also unanimously recommends that the 105th Congress enact a health privacy law before it adjourns in the fall of 1998.

Health privacy legislation presents only hard choices and difficult tradeoffs. The importance of trust in the provider-patient relationship must be preserved. Health records are used to improve the quality of health care, reduce the costs of health care, expand the availability of health care, protect the public health, and assure public accountability of the health care system. Privacy competes with all of these objectives, and it is not easy to strike a fair balance between privacy and these other worthy goals. The Committee has no doubt, however, that a privacy bill can be passed that balances the interests of patients with the needs of the health care system.

The Committee calls for a law that will require creators and users of identifiable health care information to establish a full range of fair information practices, including a patient's right of access to records, right to seek amendment of records, and right to be informed about users of health information. The law must also impose restrictions on

disclosure and use of the information, require adequate security, impose sanctions for violations, and increase reliance on non-identifiable information whenever possible.

The Committee strongly supports the use of health records for health research, subject to independent review of research protocols and other procedural protections for patients. The Committee also strongly supports the use of health records for public health purposes, subject to substantive and procedural barriers commensurate with the importance of the public health functions. The Committee believes that patients need strong substantive and procedural protections if their health records are to be disclosed to law enforcement officials.

The Committee strongly supports limiting use and disclosure of identifiable information to the minimum amount necessary to accomplish the purpose. The Committee also strongly believes that when identifiable health information is made available for non-health uses, patients deserve a strong assurance that the data will not be used to harm them.

Contact Person for More Information:

Information about the Committee as well as the text of the HIPAA recommendations is available on the NCVHS website or from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440-D, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690-7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: July 18, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97-19492 Filed 7-23-97; 8:45 am]

BILLING CODE-4151-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Health Care Policy and Research

Notice of Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of the following special emphasis panel scheduled to meet during the month of August 1997:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: August 1, 1997, 9:30 a.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open August 1, 1997, 9:30 a.m. to 9:40 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on August 1, from 9:30 a.m. to 9:40 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 17, 1997.

John Eisenberg,

Administrator.

[FR Doc. 97-19483 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.-9 p.m., August 20, 1997; 8:30 a.m.-5 p.m., August 21, 1997.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367-5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities; the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies, and an overview of FHES mission and activities will be part of the evening session.

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Steven A. Adams or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE (M/S F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: July 18, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-19467 Filed 7-23-97; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times And Dates: 8 a.m.-5 p.m., August 14, 1997; 8:30 a.m.-12 noon, August 15, 1997.

Place: Sheraton Charleston Hotel, 170 Lockwood Drive, Charleston, South Carolina 29403, telephone 803/723-3000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and

labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: July 18, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-19468 Filed 7-23-97; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-485 and HCFA-1513]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Services Under Hospital Insurance and

Supporting Regulations in 42 CFR 409.40-.50, 410.36, 410.170, 411.4-.15, 421.100, 424.22, 484.18 and 489.21; *Form No.:* HCFA-485 (OMB# 0938-0357); *Use:* The "Home Health Services Under Hospital Insurance" is a certification and plan of care used by the Regional Home Health Intermediaries (RHHIs) to ensure reimbursement is made to Home Health agencies only for services that are covered and medically necessary under Part A and Part B. The attending physician must sign the HCFA-485 (OMB 0938-0357) authorizing the home services for a period not to exceed 62 days; *Frequency:* Other (initial claim and every second claim thereafter); *Affected Public:* Business or other for-profit; *Number of Respondents:* 9,044; *Total Annual Responses:* 10,080,000; *Total Annual Hours:* 2,520,000.

2. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200-.206, 455.100-.106 and 45 CFR 228.72-.73; *Form No.:* HCFA-1513 (OMB# 0938-0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcf.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2-26-17, 7500 Security

Boulevard, Baltimore, Maryland 21244-1850.

Dated: July 18, 1997.

John P. Burke III,

HCFA Reports Clearance Officer

Division of HCFA Enterprise Standards,

Health Care Financing Administration.

[FR Doc. 97-19516 Filed 7-23-97; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection

Activities: Proposed Collection:

Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104-13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Deferment Request Form for NHSC and NHH Scholarship Programs (OMB NO. 0915-0179) Extension, No Change

We are requesting an extension of the OMB clearance for the Deferment Request Form and associated reporting requirements for the National Health Service Corps (NHSC) Scholarship Program and the Native Hawaiian Health (NHH) Scholarship Program. The NHSC/NHH Scholarship Programs are authorized by Sections 338A and Sections 338K of the Public Health Service (PHS) Act. The requirements for obligated service, found in Section 338C of the PHS Act, include provisions for deferment of the service obligation under certain circumstances (42 USC 254m(b)(5)).

Under these programs, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC or NHH program, students of other health professions (including mental health professionals) are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public

Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated Health Professions Shortage Areas (HPSA) of the United States. NHH scholarship recipients must be native Hawaiians and are assigned to sites in Hawaii. The minimum service obligation is 2 years.

Once scholarship recipients have completed their academic requirements, the law requires that selected types of recipients be allowed to defer their service obligation in order to complete an approved internship, residency, or other advanced clinical training.

The Deferment Request Form provides the information necessary for considering the period and type of training for which deferment of the service obligation will be approved for physicians and dentists.

In addition, these programs have two other reporting requirements for which no forms have been developed, including: (1) Individuals who are in a deferment status are required to submit requests in writing for modifications to the deferment (e.g., extension of deferment or change of residency programs); and (2) Dentists, who can either begin their service obligation immediately after graduation or can be deferred for up to three years, are required and to notify the program in writing of their *intent* to request deferment.

The estimated burden on respondents is as follows:

Type of report	Number of respondents	Hours per response	Total burden hours
Deferment Form	600	.5	300
Requests for Change of Deferment and Letters of Intent	100	.5	50
Total	700	350

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14-36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this Notice.

Dated: July 18, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97-19481 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Listing of Members of the Health Resources and Services Administration's Senior Executive Service Performance Review Board (PRB)

The Health Resources and Services Administration (HRSA) announces the persons who will serve on the Health Resources and Services Administration's Performance Review

Board. This action is being taken in accordance with Title 5, U.S.C., Section 4313 (c) (4), which requires that members of the performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the HRSA PRB, which oversees the evaluation of performance appraisals of HRSA's Senior Executive Service (SES) members: Thomas G. Morford, Chairperson, William A. Robinson, Neil

H. Sampson, Ileana C. Herrell, Vivian W. Pinn.

For further information about the HRSA PRB, contact the Office of Human Resources and Development, 5600 Fishers Lane, Room 14A43, Rockville, Maryland 20857, telephone (301) 443-2479.

Dated: July 18, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97-19482 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:
Name of SEP: General Clinical Research Centers.

Date: August 1, 1997.

Time: 7:30 a.m.

Place: University Plaza Hotel, Board Room, 400 N.E. 45th Street, Seattle, WA 98105.

Contact Person: Dr. Bela J. Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892-7965, (301) 435-0811.

Purpose/Agenda: To evaluate and review one grant application.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet time limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Science and Primate Research)

Dated: July 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19418 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sleep Disorders Research Advisory Board and Its Education and Sleep Research Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Sleep Disorders Research Advisory Board, and its Education and Sleep Research Subcommittees, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, September 9-10, 1997. These meetings will be held at the National Institutes of Health, Natcher Building 45, Conference Rooms D & F1, and 2, respectively, 45 Center Drive, Bethesda, Maryland 20892.

All meetings will be open to the public. The Education and Sleep Research Subcommittees will meet concurrently on September 9 from 1:00 p.m. to 5:00 p.m. to discuss sleep research and education related priorities and programs, and the Advisory Board will meet on September 10 from 9:00 a.m. to adjournment to discuss recommendations on the implementation and evaluation of the National Center on Sleep Disorders Research programs. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. James P. Kiley, Executive Secretary and Director, National Center on Sleep Disorders Research, NHLBI, Two Rockledge Center, Suite 7024, 6701 Rockledge Drive, MSC 7920, Bethesda, Maryland 20892-7920, (301) 435-0199, will furnish meeting and member information.

Dated: July 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19422 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: The Molecular Basis of Secretin Receptor Regulation.

Date: July 22, 1997.

Time: 4:00 p.m.

Place: Room 6as-25E, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Dr. Sharee Pepper, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as-25E, National Institutes of Health, Bethesda, Maryland 20892-6600, Phone: (301) 594-7798.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: July 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19413 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:
Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 24, 1997.

Time: 9 a.m.

Place: Parklawn Building, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Mary Sue Krause, Parklawn Building, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19415 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03s(97-42).

Dates: July 29, 1997.

Time: 9:30 a.m.

Place: Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03s(97-47).

Dates: July 31, 1997.

Time: 1:00 p.m.

Place: Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01(97-60).

Dates: July 31, 1997.

Time: 2:00 p.m.

Place: Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01(97-61).

Dates: August 5, 1997.

Time: 5:00 p.m.

Place: Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Branch, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: July 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19417 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Innovation Grant Program for Approaches in HIV Vaccine Research.

Date: August 1, 1997.

Time: 8:30 a.m. to Adjournment.

Place: Bethesda Ramada Hotel, Ambassador I, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654-1000.

Contact Person: Hortencia Hornbeak, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C19, Bethesda, MD 20892, (301) 496-2550.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19420 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institutes of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 25, 1997.

Time: 2:15 p.m.

Place: Parklawn Building, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn Building, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301.443-3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19583 Filed 7-21-97; 4:35 pm]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

Name of SEP: National Library of Medicine Special Emphasis Panel.

Date: July 24-25, 1997.

Closed: 8:30 a.m. to adjournment.

Place: National Library of Medicine, 8600 Rockville Pike, Learning Center Conference Room and Building 38A, Fifth-floor

Conference Room, Bethesda, Maryland 20894.

Contact: Peter Clepper, Acting Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5S-506, Bethesda, Maryland 20894, 301/496-4621.

Purpose/Agenda: To review Research Grant applications.

This is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93-879—Medical Library Assistance, National Institutes of Health)

Dated: July 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NLM.

[FR Doc. 97-19414 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 28, 1997.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4134, Telephone Conference.

Contact Person: Dr. Clark Lum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4134, Bethesda, Maryland 20892, (301) 435-1195.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: August 8, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4146, Telephone Conference.

Contact Person: Dr. Martin Padarathsingh, Scientific Review Administrator, 6701 Rockledge Drive, Room 4146, Bethesda, Maryland 20892, (301) 435-1717.

Name of SEP: Chemistry and Related Sciences.

Date: August 12, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5154, Telephone Conference.

Contact Person: Dr. Alec Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, Maryland 20892, (301) 435-1740.

Name of SEP: Behavioral and Neurosciences.

Date: August 14, 1997.

Time: 8:30 a.m.

Place: Governor's House Hotel, Washington, DC.

Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892, (301) 435-1252.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 15, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435-1146.

The meetings will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C.

Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19416 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: July 24, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435-1719.

Name of SEP: Biological and Physiological Sciences.

Date: July 30, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435-1719.

Name of SEP: Biological and Physiological Sciences.

Date: July 30, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4204, Telephone Conference.

Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4204, Bethesda, Maryland 20892, (301) 435-1221.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: August 8, 1997.

Time: 12:30 p.m.

Place: NIH, Rockledge 2, Room 4128, Telephone Conference.

Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435-1210.

Name of SEP: Biological and Physiological Sciences.

Date: August 28, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435-1719.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19419 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Closed Meeting; Board of Scientific Counselors, National Human Genome Research Institute

Pursuant to Public Law 92-463, sec. 10(d), notice is hereby given of the meeting of the Board of Scientific Counselors, National Human Genome Research Institute, August 18-20, 1997, Airlie Center, Airlie Virginia.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., the meeting will be closed to the public for the review, discussion and evaluation of individual intramural programs and projects. These programs and projects and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, National Human Genome Research Institute, National Institutes of Health, Building 49, Room 4A22, Bethesda, Maryland 20892, (301) 402-2023, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: July 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-19421 Filed 7-23-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the following meetings

of the SAMHSA Special Emphasis Panel II in July and August.

A summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: 301-443-7390.

Substantive program information may be obtained from the individuals named as Contacts for the meetings listed below.

These meetings will include the review, discussion and evaluation of individual contract proposals. The discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussions may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

The July 28 meeting notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Date: July 28, 1997 (Teleconference).

Place: Parklawn Building, 5600 Fishers Lane, Room 15-94, Rockville, Md 20857.

Closed: July 28, 1997 2:00 p.m.-4:00 p.m.

Contact: George T. Lewis, 17-89, Parklawn Building, Telephone: 301-443-4783 and FAX: 301-443-3437.

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Date: August 8, 1997.

Place: Westin Hotel, 2350 M Street, NW, Mayfair Court Conference Room, Washington, DC 20037-1490.

Closed: August 8, 1997 9:00 a.m.-5:00 p.m.

Contact: Constance M. Burtoff, 17-89, Parklawn Building, Telephone: 301-443-2437 and FAX: 301-443-3437.

Dated: July 18, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97-19484 Filed 7-23-97; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Brian McMillan, Canyon Country, CA, PRT-831938

The applicant requests a permit to sell in foreign commerce one captive-bred tiger (*Panthera tigris*) to The Animals Actors Agency, London, England, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Dallas World Aquarium, Dallas, TX, PRT-032012

The applicant requests a permit to import one male and one female Orinoco crocodile (*Crocodylus intermedius*) confiscated and captive-held by the government of Venezuela, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Dallas World Aquarium, Dallas, TX PRT-832013

The applicant requests a permit to import four arrau turtles (*Posocnemis expansa*) confiscated and captive-held by the government of Venezuela, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT-829679

The applicant requests an amendment to their application initially published May 23, 1997, for a permit to export captive-born lion-tailed macaques (*Macaca silenus*) to the Apenheul Primate Park, The Netherlands, to include an additional captive-born animal for the purpose of enhancement of the survival of the species through captive-breeding and conservation education.

Applicant: Ernest G. Stallman, Salem, WI, PRT-832299

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

The following applicants have each requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from the Northwest Territories, Canada for personal use.

Applicant/address	Population	PRT-
Maurice Sterner, Spring Grove, PA	Baffin Bay	832102
Gary F. Bogner, N. Muskegon, MI	Lancaster Sound	832218

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: July 18, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97-19479 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On March 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that an application had been filed with the Fish and Wildlife Service by the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/Address	Population	PRT-
Robert Kuykenda-II, Austin, TX.	Lancaster Sound ...	826733
Craig Leerberg, Colorado Springs, CO.	Northern Beaufort ..	826747

On April 24, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 79, Page 20020, that an application had been filed with the Fish and Wildlife Service by the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/Address	Population	PRT-
Jerome Miner, Grand Rapids, MN.	Foxe Basin	827652

Applicant/Address	Population	PRT-
Floyd R. Hardesty, Tulsa, OK.	Davis Strait	827650
Lee Gatzke, Tulare, SD.	Southern Beaufort	827521

On April 30, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 83, Page 23479, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/Address	Population	PRT-
George P. Mann, Opelika, AL.	Lancaster Sound ...	828293

On May 8, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 89, Page 25201, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/Address	Population	PRT-
George P. Mann, Opelika, AL.	Baffin Bay	828295

On May 23, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 100, Page 28493, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/Address	Population	PRT-
Donald Leiser, Bethlehem, PA.	Lancaster Sound ...	829153

Notice is hereby given that during the week of July 7-14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permits subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358-2104 or Fax (703) 358-2281.

Dated: July 18, 1997.
Karen Anderson,
Acting Chief, Branch of Permits, Office of Management Authority.
 [FR Doc. 97-19480 Filed 7-23-97; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Confederated Tribes of Siletz Indians of Oregon Alcohol Beverage Control Law

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that Resolutions numbered 96-110, 97-064 and 97-211, Liquor Ordinance of the Confederated Tribes of Siletz Indians, was duly adopted by the Siletz Tribal Council on April 20, 1996 and February 16, 1997. The Ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor on reservation lands subject to the jurisdiction of the Confederated Tribes of Siletz Indians of Oregon.

DATES: This Ordinance is effective July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Office of Tribal Services, 1849 C Street NW, MS 4641-MIB, Washington, D.C. 20240-4001; telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: The Confederated Tribes of Siletz Indians of Oregon's Resolutions numbered 96-110 and 97-064 read as follows.

Liquor Ordinance of the Confederated Tribes of Siletz Indians of Oregon, Chapter 14, Part I

Introduction

Section 14.01 Title

This Ordinance shall be known as the "Liquor Ordinance of the Confederated Tribes of Siletz Indians" (hereinafter

"Siletz Tribe"). This ordinance may be referred to as the "Siletz Liquor Control Ordinance."

Section 14.02 Purpose and Authority

The purpose of this ordinance is to regulate and control the possession and sale of liquor within Siletz Indian country, as specifically authorized and approved by the General Council referendum under Article VII, Section 2 of the Siletz Tribal Constitution. The authority for enactment of this Ordinance is as follows:

(a) The Act of August 15, 1953 (Public Law 83-277, 67 Stat. 586, codified as 18 U.S.C. § 1161) which provides a federal statutory basis for the Siletz Tribe to regulate the activities of the manufacture, distribution, sale and consumption of liquor on Indian lands under the jurisdiction of the Confederated Tribes of Siletz Indians of Oregon, so long as such ordinance is in conformance with the laws of the State of Oregon; and

(b) Article IV, Section 1, of the Constitution of the Confederated Tribes of Siletz Indians of Oregon, which vests the Tribal Council with legislative and administrative authority, and otherwise empowers the Tribal Council to act for the Confederated Tribes of Siletz Indians of Oregon.

Part II

Definitions

Section 14.03

(a) As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(1) *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

(2) *Alcoholic Beverage* is synonymous with the term "Liquor" as defined in paragraph 6 of this section.

(3) *Bar* means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of liquor, as herein defined.

(4) *Beer* means any beverage obtained by the alcoholic fermentation of any infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume.

(5) *Committee* for the purposes of this Ordinance shall mean the Tribal Council of the Siletz Tribe.

(6) *Liquor* including the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(7) *Liquor Store* means any store at which liquor is sold, and for the purposes of this Ordinance, includes a store at which only a portion of which is devoted to the sale of liquor or beer.

(8) *Malt Liquor* means beer, ale, stout, and porter.

(9) *Package* means any container or receptacle used for holding liquor.

(10) *Public Place* includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has right of access, and which are generally used by the public. For the purposes of this Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

(11) *Reservation* means the Siletz Tribe Reservation, which is held in trust by the United States for the benefit of the Siletz Tribe or held in trust for the benefit of an individual member of the Siletz Tribe.

(12) *Sale* and *Sell* include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

(13) *Spirits* mean any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(14) *Tribe* means the Confederated Tribes of Siletz Indians of Oregon.

(15) *Wine* means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

(b) (1) To the extent that definitions are not inconsistent with tribal or federal law, the terms used in this ordinance shall have the same meaning as defined in Title 37, Oregon Revised Statutes, Chapter 471, and as defined in Oregon Administrative Rules, Chapter 845.

(2) References in Section 14.03 to federal and Oregon state law shall be those laws and regulations in effect as of May 18, 1996. Subsequent changes in those laws and regulations shall be considered incorporated into this ordinance and effective unless the Siletz Tribal Council or the General Council amends this Ordinance.

Section 14.04 Conformity to State Law

(a) *Statement of Objection.* The Confederated Tribes of Siletz Indians of Oregon does not agree with the alleged authority of the United States or the State of Oregon to interfere with the Siletz Tribe's sovereign authority to regulate the control of liquor within Siletz Indian country. Nothing in this Ordinance shall be interpreted as a waiver of the Siletz Tribe's right and power to challenge such authority in judicial forums of competent jurisdiction, or by use of the political process. The Ordinance shall conform with the laws of the State of Oregon as required by 18 U.S.C. § 1161, and *Rice v. Rehner*, 463 U.S. 713 (1983).

(b) *Conformity to State Law.* The Confederated Tribes of Siletz Indians of Oregon agrees to perform in the sale and possession of liquor in the same manner as any other Oregon business entity for the purpose of liquor licensing and regulations, including but not limited to licensing, compliance with the regulations of the Oregon Liquor Control Commission (OLCC), maintenance of liquor liability insurance, and other applicable subjects as the State may address by statute or regulation from time to time. The Tribal Council may enter into an intergovernmental agreement with the State of Oregon to address the details of compliance with state law and regulation under this Ordinance, provided, that any such intergovernmental agreement shall not

conflict with or supersede the terms of this Ordinance, and shall not have force of law, unless and until this Ordinance has been validly amended pursuant to STC § 14.39 and such amendment has been approved by the appropriate officials of the United States Department of the Interior, as required by federal law.

(c) *Jurisdiction/Dispute Resolution.* Jurisdiction for enforcement of the provisions of this Ordinance by the State of Oregon shall be as set forth in an appropriate intergovernmental agreement between the Siletz Tribe and the State of Oregon. No consent to jurisdiction in the courts of the State of Oregon and no consent to a limited waiver of the Siletz Tribe's sovereign immunity shall be implied or inferred except through negotiation and express consent to jurisdiction and limited waiver of sovereign immunity in a valid intergovernmental agreement. Such agreement shall not supersede or conflict with any of the terms of this Ordinance, and shall not have force of law, unless and until this Ordinance has been validly amended pursuant to STC § 14.39 and such amendment has been approved by the appropriate officials of the United States Department of the Interior, as required by federal law.

(d) *Future Changes in the Law.* Amendment or modification of regulation by the Siletz Tribe of the sale and possession of liquor shall not be effective until this Ordinance has been validly amended pursuant to STC § 14.39 and such amendment has been approved by the appropriate officials of the United States Department of the Interior, as required by federal law.

Part III

Powers of Enforcement

Section 14.05

(a) Powers. The Committee, in furtherance of the Ordinance, shall have the following powers and duties, or may delegate such duties by resolution:

(1) To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reservation;

(2) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Committee to perform its functions. Such employees shall be tribal employees;

(3) To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;

(4) To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(5) To bring suit in the appropriate court to enforce this Ordinance as necessary;

(6) To determine and seek damages for violation of this Ordinance;

(7) To make such reports as may be required;

(8) To collect taxes and fees levied or set by the Committee, and to keep accurate records, books and accounts; and

(9) To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance.

(b) The Committee shall have the authority to authorize the sale of liquor only on those areas of the Siletz Tribe's reservation that have been specifically approved by the Siletz General Council, by referendum, and under such conditions as may be included in said referendum.

Section 14.06 Limitation on Powers

In the exercise of its powers and duties under this Ordinance, the Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

Section 14.07 Inspection Rights

The premises on which liquor is sold or distributed shall be open for inspection by the Committee at all reasonable time for the purposes of ascertaining whether the rules and regulations of this Ordinance are being complied with.

Part IV

Sales of Liquor

Section 14.08 Licenses Required

No sales of alcoholic beverages shall be made, except at a tribally-licensed or tribally-owned business operated on Reservation land within the exterior boundaries of the Siletz Tribe.

Section 14.09 Sales for Cash

All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

Section 14.10 Sale for Personal Consumption

All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchases within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Ordinance

who purchases an alcoholic beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Siletz Tribe as set forth herein.

Part V

Licensing

Section 14.11 Requirements for Application for Tribal Liquor License

No individual tribal license shall issue under this Ordinance except upon a sworn application filed with the Committee containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of Oregon.

(b) Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible.

(c) The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.

(d) Agreement by the applicant to accept and abide by all conditions of the tribal license.

(e) Payment of a license fee as prescribed by the Committee.

(f) Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

(g) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license. The notice shall state the date, time, and place when the application shall be considered by the Committee pursuant to Section 14.12 of this Ordinance.

Section 14.12 Hearing on Application for Tribal Liquor License

All applications for a tribal liquor license shall be considered by the Committee in open session at which the applicant, his/her attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the applicant. After the hearing, the Committee, by secret ballot, shall determine whether to grant or deny the application based on:

(a) Whether the requirements of Section 14.11 have been met; and

(b) Whether the Committee, in its discretion, determines that granting the license is in the best interest of the Siletz Tribe.

In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Tribal Council member, such member shall not vote on the application or participate in the hearings as a Committee member.

Section 14.13 Temporary Permits

The Committee or its designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any persons applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 14.14 of this Ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee, as set by the Committee, will be assessed on temporary permits.

Section 14.14 Conditions of the Tribal License

Any tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Committee shall fix, including, but not limited to the following:

(a) The license shall be for a term not to exceed 2 years;

(b) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises;

(c) The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under applicable law;

(d) The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours;

(e) Subject to the provisions of subsection (g) of this Section, no intoxicating beverages shall be sold, served, disposed of, delivered or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Oregon, and in accordance with the hours fixed by the Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of Oregon.

(f) No liquor shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Siletz Tribe, and

including special days of observance as designated by the Committee.

(g) All acts and transactions under authority of the tribal liquor licenses shall be in conformity with the laws of the State of Oregon, as required by federal law, and shall be in accordance with this Ordinance and any tribal license issued pursuant to this Ordinance.

(h) No person under the age permitted under the laws of the State of Oregon shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

(i) There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

Section 14.15 License Not a Property Right

Notwithstanding any other provision of this Ordinance, a tribal liquor license is a mere permit for a fixed duration of time. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Section 14.16 Assignment or Transfer

No tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Committee expressed by formal resolution.

Part VI

Rules, Regulations and Enforcement

Section 14.17 Sales or Possession With Intent To Sell Without a Permit

Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession with intent to sell or distribute without a permit, shall be guilty of a violation of this Ordinance.

Section 14.18 Purchases From Other Than Licensed Facilities

Any person within the boundaries of the Reservation who buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 14.19 Sales to Persons Under the Influence of Liquor

Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 14.20 Consuming Liquor in Public Conveyance

Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of a violation of this Ordinance. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this Ordinance.

Section 14.21 Consumption or Possession of Liquor by Persons Under 21 Years of Age

No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his/her premises or any premises under his/her control except in those situations set out in this Section. Any persons violating this Section shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 14.22 Sales of Liquor to Persons Under 21 Years of Age

Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this Ordinance for each sale or drink provided.

Section 14.23 Transfer of Identification to Minor

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this Ordinance.

Section 14.24 Use of False or Altered Identification

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Ordinance.

Section 14.25 Violation of This Ordinance

Any person guilty of a violation of this Ordinance shall be liable to pay the Siletz Tribe a penalty not to exceed \$500 per violation as civil damages to defray the Siletz Tribe's cost of enforcement of this Ordinance. In addition to any penalties so imposed, a license issued hereunder may be

suspended or canceled by the Committee for the violation of any of the provisions of this Ordinance, or of the tribal license, upon hearing before the Committee after 10 days notice to the licensee. The decision of the Committee shall be final.

Section 14.26 Acceptable Identification

Where there may be a question of a person's right to purchase liquor by reason of his/her age, such person shall be required to present any one of the following issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

- (1) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;
- (2) United States Active Duty Military Identification;
- (3) Passport.

Section 14.27 Possession of Liquor Contrary to This Ordinance

Alcoholic beverages which are possessed contrary to the terms of this Ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Committee to enforce this section shall have the authority to and shall seize all contraband.

Section 14.28 Disposition of Seized Contraband

Any officer seizing contraband shall preserve the contraband in accordance with applicable law. Upon being found in violation of this Ordinance by the Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Siletz Tribe.

Part VII

Taxes

Section 14.29 Sales Tax

The Committee shall have the authority, by regulation, to levy and collect a sales tax on each sale of alcoholic beverages on the Reservation. The amount of such tax shall be set by regulation, shall include credit card payments, and shall include all retail sales of liquor on the Reservation.

Section 14.30 Payment of Taxes to Tribe

All taxes from the sale of alcoholic beverages on the Reservation shall be paid over to the agency of the Siletz Tribe.

Section 14.31 Taxes Due

All taxes for the sale of alcoholic beverages on the Reservation are due

within thirty (30) days of the end of the calendar quarter for which the taxes are due.

Section 14.32 Reports

Along with payment of the taxes imposed herein, the taxpayers shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 14.33 Audit

As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done annually by the Siletz Tribe through its agents or employees whenever, in the opinion of the Committee, such a review or audit is necessary to verify the accuracy of reports.

Part VIII

Profits

Section 14.34 Disposition of Proceeds

The gross proceeds collected by the Committee from licensing and provided from the taxation of the sales of alcoholic beverages on the Reservation shall be distributed as follows:

(a) For the payment of all necessary personnel, administrative costs, and legal fees for the operation of the Committee and its activities.

(b) The remainder shall be turned over to the account of the Siletz Tribe.

Part IX

Severability and Miscellaneous

Section 14.35 Severability

If any provision or application of this Ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

Section 14.36 Prior Enactments

All prior enactments of the Tribal Council which are inconsistent with the provisions of this Ordinance are hereby rescinded.

Section 14.37 Conformance With Oregon Laws

All acts and transactions under this ordinance shall be in conformity with the laws of the State of Oregon as that term is used in 18 U.S.C. 1161.

Section 14.38 Effective Date

This Ordinance shall be effective on July 24, 1997.

Part X

Amendment

Section 14.39

This Ordinance may only be amended or repealed by a majority vote of the Tribal Council. The authorized areas of the Siletz Tribe's Reservation where alcohol may be sold may only be amended or repealed by the General Council.

Part XI

Sovereign Immunity

Section 14.40

Nothing contained in this Ordinance is intended to, nor does in any way limit, alter, restrict, or waive the Siletz Tribe's sovereign immunity from unconsented suit.

Dated: July 15, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97-19410 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment I to the Tribal-State Compact for Control of Class III Games of Chance Between the Sisseton-Wahpeton Sioux Tribe and the State of North Dakota, which was executed on May 14, 1997.

DATES: This action is effective July 24, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219-4068.

Dated: July 16, 1997.

Michael J. Anderson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 97-19430 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-050-1110-00:G7-0196]

Prineville District; Shooting Restriction on Public Lands; Oregon

July 14, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that BLM managed public lands within the Middle Deschutes Wild and Scenic River boundaries are closed to shooting yearlong except when legally hunting game birds, games mammals, or furbearers during official state waterfowl, upland game, big game, and furbearer seasons.

LEGAL DESCRIPTION: This order applies to all public lands within the Middle Deschutes Wild and Scenic River boundaries, as defined in the Middle Deschutes/Lower Crooked Wild and Scenic Rivers' Management Plan, including BLM lands within: Township 12 South, Range 12 East, Section 29, SW SE; Section 29, SE SW; Section 32, W^{1/2}. Township 13 South, Range 12 East, Section 5, W^{1/2}, Section 6, E^{1/2} SE^{1/4}, Section 7, E^{1/2} NE^{1/4}, Section 8, NW, Section 8, N^{1/2} SW^{1/4}, Section 8, SE, Section 17, E^{1/2}, Section 20, NE, Section 21, SW NW, Section 21, S^{1/2}, Section 27, SW NW, Section 27, NW SW, Section 28, E^{1/2}, Section 33, SE NW, Section 33, S^{1/2} NE^{1/4}, Section 33, E^{1/2}, SE^{1/4}, Section 34, W^{1/2} SW^{1/4}. Township 14 South, Range 12 East, Section 4, N^{1/2}, Section 4, N^{1/2} SE^{1/4}, Section 9, NE NE, Section 10, NW NW, Section 10, SW SW, Section 11, S^{1/2}, Section 14, W^{1/2} E^{1/2}, Section 14, E^{1/2} W^{1/2}, Section 14, NW NW, Section 22, SW NE, Section 26, SE SE.

BLM managed public lands within the Middle Deschutes Wild and Scenic River boundaries are closed to shooting yearlong except when legally hunting game birds, game mammals, and furbearers during official state waterfowl, big game, upland game, and furbearer seasons. Shooting is defined as "the discharge of firearms". A firearm is defined as "a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon." The purpose of this closure is to protect wildlife resources and to improve public safety. More specifically, this closure was partly ordered to protect nesting golden eagles within the river corridor. Currently, the occurrence of shooting jeopardizes the nesting success of golden eagles within the river corridor and poses a threat to

recreationists and other public land users. Exemptions to this closure order may be made on a case-by-case basis by the authorized officer. This closure will be evaluated in the Urban Interface Amendment to the Brothers/La Pine Resource Management Plan of 1989 and future amendments to the Two Rivers Resource Management Plan of 1986. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Wildlife Biologist, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416-6725.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0-7.

Dated: July 14, 1997.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 97-19506 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-050-1110-00:G7-0195]

Prineville District; Shooting Restriction on Public Lands; Oregon

July 14, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that the area as legally described below is closed to shooting yearlong except when legally hunting game birds, game mammals, or furbearers during official state waterfowl, upland game, big game, and furbearer seasons.

LEGAL DESCRIPTION: This order applies to all areas within Township 17 South, Range 13 East, Section 23, NE of the SE.

All areas within Township 17 South, Range 13 East, Section 23, NE of the SE, are closed to shooting yearlong except when legally hunting game birds, game mammals, or furbearers during official state waterfowl, upland game, big game, and furbearer seasons. Shooting is defined as "the discharge of firearms". A firearm is defined as "a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon." The purpose of this closure is to protect wildlife resources and other natural values, reduce vandalism, and improve public safety. Currently, the occurrence

of shooting at Mayfield Pond continues to result in damage to wildlife resources (including migratory shorebirds, resident wildlife, and special status animal species); destruction of natural features; and vandalism to land and installations. The occurrence of shooting poses a threat to recreationists and other public land users. Exemptions to this closure order may be made on a case-by-case basis by the authorized officer. This emergency order will be evaluated in the Urban Interface Amendment to the Brothers/La Pine Resource Management Plan of 1989. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Wildlife Biologist, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416-6725.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0-7.

Dated: July 14, 1997.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 97-19507 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-96-1990-00]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 9 a.m., Wednesday, August 20, 1997. Issues that will be discussed include 3809 Surface Management Regulations, the approval process of ORV use on public lands, updates on RS2477, the Beaverhead Lawsuit, and Standards & Guidelines Implementation. The meeting will be held at the Fan Mountain Inn in Ennis, Montana. The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the

meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702-3388, telephone 406-494-5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: July 16, 1997.

James R. Owings,
District Manager.

[FR Doc. 97-19512 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-1430-00; CACA 7663, CACA 7953, CACA 8151, and CACA 8153]

Order Providing for Opening of Lands Subject to Section 24 of the Federal Power Act; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens to disposal by either land exchange or sale, subject to section 24 of the Federal Power Act (FPA), 1,561.66 acres of public lands withdrawn by an U. S. Geological Survey Order dated April 22, 1948, an Executive Order dated May 11, 1915, and two Federal Power Commission orders, dated July 18, 1949 and June 12, 1962, respectively, for power site purposes. This action will permit consummation of pending land exchanges and retain the power rights to the United States of America. The Federal Energy Regulatory Commission (FERC) has determined that the power value of the subject lands will not be injured or destroyed by their disposal by either land exchange or sale, if the land exchange or sale are subject to section 24 of FPA. FERC concurred with this action in three letters: DVCA-1241, dated December 10, 1996; DVCA-1242-000, dated April 17, 1997; and DVCA-1243-000, dated May 5, 1997. Although the lands have been and will remain closed to mining because of the withdrawals for the two power projects or the existing segregation for the pending land exchanges, they have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA-931.4), 2135 Butano Drive, Sacramento, CA 95825-0451, 916-978-4675.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determinations by the Federal Energy Regulatory Commission in DVCA-1241, DVCA-1242-000, and DVCA-1432-000, it is ordered as follows:

1. At 8:30 a.m. on July 24, 1997, the following described lands withdrawn by an U. S. Geological Order, dated April 22, 1948, for Power Site Classification Number 391 (CACA 7663), will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCA-1243-000, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Mount Diablo Meridian

T. 9 N., R. 4 W.,

Sec. 4, lot 9, and lots 14 through 18, inclusive;

Sec. 5, lots 5 through 10, inclusive, and lots 14 and 15.

T. 10 N., R. 4 W.,

Sec. 30, N $\frac{1}{2}$ of lot 8;

Sec. 31, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 10 N., R. 5 W.,

Sec. 23, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$.

The areas described aggregate 675.07 acres in Napa County.

2. At 8:30 a.m. on July 24, 1997, the following described land withdrawn by an Executive Order, dated May 11, 1915, for Power Site Reserve Number 487 (CACA 7953), will be opened to disposal by land exchange or sale subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCA-1243-000, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Mount Diablo Meridian

T. 8 N., R. 9 E.,

Sec. 25, lots 6 and 7 (originally described as lots 1 and 2).

The area described contains 24.62 acres in Amador and El Dorado Counties.

3. At 8:30 a.m. on July 24, 1997, the following described land withdrawn by a Federal Power Commission Order, dated July 18, 1949, for Power Project Number 2019 (CACA 8151), will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCA-1242-000, and subject to valid existing rights, the provisions of existing

withdrawals, and the requirements of applicable law:

Mount Diablo Meridian

T. 4 N., R. 14 E.,

Sec. 36, that portion of S $\frac{1}{2}$ NE $\frac{1}{4}$ lying inside of the project boundary for Power Project Number 2019 (i.e., 100 feet on either side of the centerline of the Utica Conduit).

The area described contains 35.19 acres in Calaveras County.

4. At 8:30 a.m. on July 24, 1997. The following described lands withdrawn by a Federal Power Commission Order, dated June 12, 1962, for Power Project Number 2082 (CACA 8153), will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCA-1241, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Mount Diablo Meridian

T. 47 N., R. 5 W.,

Sec. 4, lot 4 and W $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 48 N., R. 4 W.,

Sec. 18, lots 1 through 4, inclusive.

T. 48 N., R. 5 W.,

Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 34, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$.

The areas described aggregate 826.78 acres in Siskiyou County.

5. The State of California has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1994), as amended.

Dated: July 17, 1997.

Richard T. Forester,

Acting Chief, Branch of Lands.

[FR Doc. 97-19411 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-050-1220-00; GP7-0244]

Amendment to Prohibited Acts in Deschutes National Wild and Scenic River Area

July 16, 1997.

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Notice.

SUPPLEMENTARY INFORMATION: The following amendments are made to the notice date April 8, 1994 published in

the **Federal Register**; Vol. 59, No. 73; Friday, April 15, 1994.

Part 9 (Alcoholic beverages and controlled substances) is amended by the following:

Subpart (a) is replaced with the following:

No person under the influence of an intoxicating liquor or controlled substance shall operate, propel, or be in actual physical control of any boat upon the water. Not less than .08 percent by weight of alcohol in a persons blood constitutes being under the influence of intoxicating liquor. Refusal by an operator to submit to a test may be admissible in any related judicial proceeding.

Subpart (b) is replaced with the following:

No owner of a boat or person in charge or in control of a boat shall authorize or knowingly permit a boat to be propelled or operated upon the water by any person who is under the influence of an intoxicating liquor or a controlled substance.

Dated: July 11, 1997.

James L. Hancock,

District Manager.

[FR Doc. 97-19514 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. The listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Texaco Exploration and Production, Inc., Pipeline Activity, SEA No. G-16093A.	Ewing Bank Area, Blocks 873, 829, 785; South Timbalier Area, South Addition, Block 308; Lease G 16093; 67 miles south of the nearest coastline in Louisiana.	05/14/97
Destin Pipeline Company, Pipeline Activity, SEA No. G-17689	Main Pass Area, Blocks 260, 248, 247, 226, 216, 215, 196, 190, and 171; Mobile Area, Blocks 997, 996, 952, 951, 907, 863, and 819; Viosca Knoll Area, Blocks 383, 339, 295, 251, 207, 163, 119, 118, 74, 73, and 29; Lease G 17689; 61 miles south of the nearest coastline to shore near Pascagoula, Mississippi.	06/24/97
OEDC Exploration & Production, L.P.'s Pipeline Activity, SEA No. G-17694.	Pensacola, Block 881, to Mobile Area, Block 960; Lease G-17694; 8-17 miles south of Baldwin County, Alabama.	06/30/97
OEDC Exploration & Production, L.P.'s, Pipeline Activity, SEA No. G-17695.	Destin Dome, Block 2, to Mobile Area, Block 960; Lease G-17695; 8-17 miles south of Baldwin County, Alabama.	06/30/97
OEDC Exploration & Production, L.P.'s Pipeline Activity, SEA No. P-11280.	Destin Dome, Blocks 1 & 2, Leases OCS-G 6397 and 6398, 17 miles south of Baldwin County, Alabama.	06/30/97
OEDC Exploration & Production, L.P.'s, Pipeline Activity, SEA No. P-11280.	Destin Dome, Blocks 1 & 2, Leases OCS-G 6397 and 6398, 17 miles south of Baldwin County, Alabama.	06/30/97
OEDC Exploration and Production, L.P.'s, Development Activity, SEA No. N-5542.	Pensacola, Block 881, Lease OCS-G 6390, 8 miles south of Baldwin County, Alabama.	06/30/97
OEDC Exploration and Production, L.P.'s Development Activity, SEA No. N-5543.	Destin Dome, Blocks 1 and 2, Leases OCS-G 6397 and 6398, 17 miles south of Baldwin County, Alabama.	06/30/97
The Louisiana Land and Exploration Company, Structure Removal Operations, SEA No. ES/SR 96-037A.	Vermilion Area, Block 187, Lease OCS-G 6673, 55 miles south of Vermilion Parish, Louisiana.	06/12/97
Amoco Exploration and Production, Structure Removal Operations, SEA No. ES/SR 96-097A.	Eugene Island Area, Block 367, Lease OCS-G 2618, 70 miles south-southwest of Terrebonne Parish, Louisiana.	05/30/97
Energy Development Corporation, Structure Removal Operations, SEA No. ES/SR 97-008A.	North Padre Island Area, Block 967, Lease OCS-G 3218, 19 miles east of Padre Island National Seashore.	06/16/97
UNOCAL Corporation, Structure Removal Operations, SEA No. ES/SR 97-023B.	Matagorda Island Area, Block 701, Lease OCS-G 4549, 20 miles south of Calhoun County, Texas.	05/01/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97-036 through 97-044.	South Timbalier Area, Block 27, Lease OCS-G 1443, 20 miles south of Leeville, Louisiana.	04/23/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97-055 through 97-060.	Grand Isle Area, Block 85, Lease OCS-G 1492; South Timbalier Area, Blocks 130, 134, and 151; Leases OCS 0456, 0461, and 0463; 25 miles south of Lafourche Parish, Louisiana.	05/21/97
Burlington Resources Offshore, Inc., Structure Removal Operations, SEA No. ES/SR 97-069.	South Timbalier Area, Block 241, Lease OCS-G 12976, 60 miles southwest of Fourchon, Louisiana.	06/19/97
Mobil Exploration and Producing, Structure Removal Operations, SEA No. ES/SR 97-070.	West Cameron Area, Block 72, Lease OCS 0245, 18 miles south of Cameron, Louisiana.	06/23/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97-073 through 97-075.	Bay Marchand Area, Block 3, Lease OCS 0370; Grand Isle Area, Block 37, Lease OCS 0392; 5 miles south of Lafourche Parish, Louisiana.	06/04/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97-076 through 97-079.	Grand Isle Area, Block 37, Leases OCS 0685 and 0392; South Timbalier Area, Block 23, Leases OCS 0386 and 0166; 6-7 miles south of Lafourche Parish, Louisiana.	05/15/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97-080 through 97-082.	South Timbalier Area, Blocks 23 and 24; Main Pass Area, Block 69; Leases OCS 0386, 0387, and 0372; 20 miles west of Venice, Louisiana.	06/11/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97-083.	West Cameron Area, Block 173, Lease OCS 0759, 26 miles south-southwest of Vermilion Parish, Louisiana.	05/13/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97-084.	West Cameron Area, Block 181, Lease OCS-G 1971, 30 miles south of Cameron Parish, Louisiana.	06/05/97
Apache Corporation, Structure Removal Operations, SEA Nos. ES/SR 97-085 through 97-089.	Ship Shoal Area, Block 37, Lease OCS-G 5041, 5 miles south of Terrebonne Parish, Louisiana.	06/26/97
Falcon Offshore Operating Company, Structure Removal Operations, SEA No. ES/SR 97-090.	Brazos Area, Block 398, Lease OCS-G 11270, 22 miles south of Freeport, Texas.	06/18/97
Walter Oil and Gas Corporation, Structure Removal Operations, SEA Nos. ES/SR 97-091 and 97-092.	West Delta Area, Block 63, Lease OCS-G 2933, 17 miles west-southwest of the shore of Plaquemines Parish, Louisiana.	06/04/97
Apache Corporation, Structure Removal Operations, SEA Nos. ES/SR 97-065, 97-066, 97-067, 97-093, and 97-094.	Vermilion Area, Blocks 325 and 41; West Cameron Area, Block 379; Leases OCS-G 5016, 6289, and 9489; 40 to 120 miles south-east of Sabine Pass, Texas.	06/23/97
Chevron, U.S.A., Structure Removal Operations, SEA No. ES/SR 97-095.	West Delta Area, Block 29, Lease OCS 0385, 8 miles South of Plaquemines Parish, Louisiana.	05/19/97
Amerada Hess Corporation, Structure Removal Operations, SEA Nos. ES/SR 97-097 and 097-098.	West Cameron Area, Blocks 572 and 571, Leases OCS-G 7631 and 7632, 104 miles south of Cameron Parish, Louisiana.	05/30/97
Amerada Hess Corporation, Structure Removal Operations, SEA Nos. ES/SR 97-100 and 101.	Brenton Sound Area, Blocks 54 and 55, Leases OCS-G 4491 and 4492, 3 miles east of the shoreline in Plaquemines Parish, Louisiana.	06/24/97
Energy Resources Technology, Inc., Structure Removal Operations, SEA No. ES/SR 97-102.	West Cameron Area, Block 177, Lease OCS-G 1471, 24 miles south-southwest of the shore of Cameron Parish, Louisiana.	06/13/97

Activity/operator	Location	Date
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 97-104.	Vermilion Area, Block 325, Lease OCS-G 2089, 92 miles south of the shore of Vermilion Parish, Louisiana.	05/22/97
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 97-105.	Vermilion Area, Block 61, Lease OCS-G 7679, 14 miles south of the shore of Vermilion Parish, Louisiana.	06/24/97
Union Pacific Resources, Structure Removal Operations, SEA Nos. ES/SR 97-107 through 97-109.	High Island Area, Blocks A-562, A-193, and A-200; Leases OCS-G 13436, 6211 and 8172; 125 miles south of Sabine Pass, Texas.	05/15/97
CNG Producing Company, Structure Removal Operations, SEA Nos. ES/SR 97-110 through 97-112.	Ship Shoal Area, Blocks 246 and 271, Leases OCS-G 1027 and 1038, 48 to 55 miles from the shoreline of Terrebonne Parish, Louisiana.	06/24/97
Seagull Energy E&P Inc., Structure Removal Operations, SEA Nos. ES/SR 97-115 and 97-116.	Galveston Area, Block 391, Lease OCS-G 3740, 27 miles from the shoreline of Brazoria County, Texas.	06/24/97
Newfield Exploration Company, Structure Removal Operations, SEA No. ES/SR 97-117.	East Cameron Area, Block 46, Lease OCS-G 3288, 15 miles south of Cameron Parish, Louisiana.	06/18/97
Enron Oil & Gas Company, Structure Removal Operations, SEA No. ES/SR 97-118.	Viosca Knoll Area, Block, 32, Lease OCS-G 7871, 18 miles south of the shore of Dauphin Island, Alabama.	06/05/97
The Coastal Corporation, Structure Removal Operations, SEA No. ES/SR 97-119.	West Cameron Area, Block 498, Lease OCS-G 3520, 85 miles south of Cameron Parish, Louisiana.	06/05/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97-120 and 97-121.	Bay Marchand Area, Blocks 2 and 3, Leases OCS 0369 and OCS 0370, 5 miles south of Lafourche Parish, Louisiana.	06/12/97
Union Pacific Resources, Structure Removal Operations, SEA No. ES/SR 97-122.	Ship Shoal Area, Block 251, Lease OCS-G 10782, 49 miles south of Terrebonne Parish, Louisiana.	06/26/97
Murphy Exploration and Producing Company, Structure Removal Operations, SEA Nos. ES/SR 97-123 and 97-124.	Eugene Island Area, Block 47, Lease OCS 0317, 10 miles south of St. Mary Parish, Louisiana.	06/19/97
Murphy Exploration and Production Company, Structure Removal Operations, SEA Nos. ES/SR 97-125 through 97-133.	Ship Shoal Area, Blocks 90, 92, 93, 94, 120, and 134, Leases OCS 0063, OCS 0042, OCS-G 5540, OCS-G 5545, and OCS-G 5201, 25 miles south of Terrebonne Parish, Louisiana.	06/23/97
Enron Oil and Gas Company, Structure Removal Operations, SEA No. ES/SR 97-134.	Viosca Knoll Area, Block 156, Lease OCS-G 7885, 25 miles south of Jackson County, Mississippi.	06/24/97
Santa Fe Energy Resources, Inc., Structure Removal Operations, SEA No. ES/SR 97-135.	Vermilion Area, Block 249, Lease OCS-G 6678, 70 miles south of Vermilion Parish, Louisiana.	06/26/97
Enron Oil and Gas Company, Structure Removal Operations, SEA No. ES/SR 97-136.	East Cameron Area, Block 306, Lease OCS-G 7667, 95 miles south of Cameron Parish, Louisiana.	06/26/97

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds

that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 16, 1997.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 97-19505 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 168

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1988)), and the regulations issued thereunder (30 CFR Part 256).

A "Sale Notice Package," containing this Notice and several supporting

documents referenced in the Notice, including the maps, "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 168" and "Stipulations and Deferred Blocks, Sale 168," is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

2. *Filing of Bids.*

(a) *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.)) until the Bid Submission Deadline at 10 a.m., Tuesday, August 26, 1997. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, August 27, 1997. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m., Tuesday, August 26, 1997.

Note: As noted in the Final Notices of Sale for Sales 157, 161, and 166, tracts or portions of tracts beyond the United States Exclusive Economic Zone are offered based upon provisions of the 1982 Law of the Sea Convention, and could be subject to a continental shelf delimitation agreement between the United States and Mexico. For clarity and descriptive purposes, this area is referred to in this Notice as the "Northern Portion of the Western Gap." A list of these tracts or portions of tracts and a map are included in the Sale Notice Package available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)).

Procedures for opening of bids for all blocks except for blocks in the Northern Portion of the Western Gap are specified in paragraph (1) below. Procedures for opening of bids for blocks in the Northern Portion of the Western Gap are specified in paragraph (2) below:

(1) Bid Opening Time will be 9 a.m., Wednesday, August 27, 1997, at the Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 62 FR 14699, published on March 27, 1997.

(2) Procedures for opening bids on blocks in this area will differ from procedures described above as follows: The MMS will set aside bids for blocks in the Northern Portion of the Western Gap until a future date. On or before March 3, 1998, the Secretary will determine whether it is in the best interest of the United States either to open bids for these blocks or to return the bids unopened. The MMS will notify bidders at least 30 days prior to bid opening. Bidders on these blocks may withdraw their bids at any time after such notice and prior to 10 a.m. (c.s.t.) of the day before bid opening. If MMS does not give notice by March 3, 1998, MMS will return the bids unopened. This will provide time for companies to make decisions regarding the next annual Central Gulf and the next annual Western Gulf lease sales, proposed for March and August 1998, respectively, which may also, as they have for more than the past decade, offer tracts in the Northern Portion of the Western Gap. The MMS reserves the right to return these bids at any time. The MMS will not disclose which blocks received bids or the names of bidders in this area unless and until the bids are opened.

(b) *Natural Disasters.* In the event a natural disaster (such as widespread flooding) or other occurrence causes the MMS Gulf of Mexico Regional Office to

be closed on Tuesday, August 26, 1997, bids will be accepted until 9 a.m., Wednesday, August 27, 1997, at the site of bid opening specified above. Under these conditions, bids may be modified or withdrawn upon written notification up until 9 a.m., Wednesday, August 27, 1997. Closure of the office may be determined by calling (504) 736-0557 and hearing a recorded message to that effect.

3. *Method of Bidding.*

Procedures for the submission of bids in Sale 168 are described in paragraph (a) below. Procedures for the submission of bids for blocks in the Northern Portion of the Western Gap will differ from bid submission procedures for bids on blocks outside that area. These differences are specified in paragraph (b) below.

(a) *Submission of Bids.* A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 168, not to be opened until 9 a.m., c.s.t., Wednesday, August 27, 1997" must be submitted for each tract bid upon. The sealed envelope and the bid should contain the following information: the company name, Gulf of Mexico Company Number (GOM Company Number), Leasing Map or Official Protraction Diagram number (e.g., TEX-MAP No. 1 for the South Padre Island Area, NG 14-3 for the Corpus Christi Area), and the area name and block number of the tract bid upon. In addition, the total amount bid to be considered by MMS must be in a whole dollar amount. Any cent amount above the whole dollar will be ignored by MMS. No bid for less than all of the available portion(s) of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico Regional Office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent, to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

Bidders must submit the 1/5th cash bonus using one of the following options:

(1) Bidders may submit with each bid 1/5th of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals

Management Service. For identification purposes, the following information must appear on the check or draft: company name, GOM Company Number, and the area and block bid on (abbreviation acceptable); or

(2) Bidders may use electronic funds transfer (EFT) payment for 1/5th of the cash bonus, payable to the Minerals Management Service. Bidders who choose this method must contact MMS Royalty Management (Mr. David Menard at (303) 231-3574) by the Bid Submission Deadline to inform MMS of their intent to use EFT, to clarify EFT procedures to be used, and to designate an EFT coordinator. Joint bidders must designate one bidder as EFT coordinator. EFT coordinators must submit the bids and ensure that the total of the 1/5 cash bonus for the high bids they submit is transferred to MMS via EFT. The EFT payment shall be made by either the Fedwire Deposit System (same day payments) or the Automated Clearing House (overnight payments).

The Gulf of Mexico OCS Regional Office will advise bidders who submit high bids of the amount required for EFT payment. Promptly after notification, the EFT coordinators must instruct their banks to send via EFT the sum of the 1/5th bonus for all high bids to the appropriate United States Treasury account. Instructions for making EFT 1/5th bonus payments are included in the Sale Notice Package. [These procedures/instructions are consistent with 4/5th bonus and first year rental payment procedures using EFT.]

Additionally, each EFT coordinator must submit in a separate sealed envelope accompanying the bids, a single payment for 1/5th of the sum of all bids submitted by that EFT coordinator for Sale 168, including joint bids. The lump sum payment(s) in the sealed envelope(s) must be in cash, or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. These lump sum payments will be used to secure the EFT payments. Once the EFT payment in an amount sufficient to cover that bidder's high bids is credited to the appropriate United States Treasury account, the lump sum payment accompanying those bids will be returned. The envelope containing this payment should be in the following format:

Lump Sum Check Securing EFT Payments

Submitted by: Explorer LTD.
GOM Company No.: 20999

The EFT payment for 1/5th of the sum of the high bids on blocks must be received in the appropriate United States Treasury account no later than noon, Eastern Time, on August 28, 1997, the day after Lease Sale 168.

If the EFT payments are late or deficient in amount, the lump sum payments accompanying the bids will be deposited into the appropriate United States Treasury account. Should these payments (which secure high bids and unsuccessful bids) require a refund to the bidders, those refunds, without interest, will be accomplished through EFT as soon as practicable. No interest payments will be made for unsuccessful bid(s) returned in this manner.

(b) *Submission of Bids in the Northern Portion of the Western Gap.* Procedures for the submission of bids on blocks in this area will differ from procedures described in paragraph (a) above as follows:

The MMS will receive bids on blocks in the Northern Portion of the Western Gap. Separate, signed bids on these blocks must be submitted in sealed envelopes labeled only with "Northern Portion of Western Gap Bid", the Gulf of Mexico Company Number, and a sequential bid number for the company submitting the bid(s). The envelope would thus be in the following format:
Northern Portion of Western Gap Bid
GOM Company No.: 20999
Northern Portion of Western Gap Bid
number 1

Bidders must submit bids using one of the options described in paragraph 3(a) above. If the option to use EFT for the 1/5th cash bonus is selected, each EFT coordinator submitting bids on blocks within the Northern Portion of the Western Gap must submit, in a separate sealed envelope accompanying those bids, a single payment for 1/5th of the sum of all bids on blocks within the Northern Portion of the Western Gap, including joint bids. The envelope containing this payment should be in the following format:

Lump Sum Check Securing EFT
Payments
Northern Portion of the Western Gap
GOM Company No.: 20999

If the bids on blocks in the Northern Portion of the Western Gap are not opened, the sealed envelopes containing the lump sum checks will be returned to EFT coordinators along with the unopened bids.

The EFT payment for 1/5th of the sum of the high bids on blocks within the Northern Portion of the Western Gap must be received in the appropriate United States Treasury account no later than noon, Eastern Time, on the day

after opening of bids on these blocks (see paragraph 2(a)(2)).

(c) *Submission of Statement(s) Regarding Certain Geophysical Data.* Each company submitting a bid, or participating as a joint bidder in such a bid, shall submit, prior to the Bid Submission Deadline specified in paragraph 2 of this Notice, a statement or statements identifying any processed or reprocessed pre- and post-stack depth-migrated geophysical data in their possession or control pertaining to each and every block on which they are participating as a bidder. The existence, extent, and type of such data must be clearly identified. In addition, the statement shall certify that no such data is in their possession for any other blocks on which they participate as a bidder. The statement shall be submitted in an envelope separate from those containing bids and shall be clearly marked; an example of a preferred format for the statement and the envelope is included in the document titled "Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico" (revised January 19, 1996). Only one statement per bidder is required for each sale, but more than one may be submitted if desired, provided that all tracts bid on by that company are covered in the one or more statements. Companies bidding on blocks in the Northern Portion of the Western Gap (see paragraph 2(a)) must submit a separate statement covering any blocks in that area. This statement must be in a sealed envelope with a label stating that it contains information regarding blocks in the Northern Portion of the Western Gap. The following format is recommended:

For Blocks In The Northern Portion Of
The Western Gap Only
GOM Company No. 20137
Depth-Migrated Seismic Data Statement
Proprietary Data
Submitted In Conjunction With Oil And
Gas Lease Sale 168

This envelope will be opened only if and when bids on blocks in this area are opened (see paragraph 2(a)). If these bids are not opened, the sealed envelopes will be returned to the companies who submitted them.

Paragraph 14(j), *Information to Lessees*, contains additional information pertaining to geophysical data.

4. *Minimum Bid, Yearly Rental, and Bidding Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Minimum Bid.* All bids submitted at this sale must provide for a cash bonus in the amount of \$25.00 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded on tracts in water depths of 200 meters and greater as depicted on the map "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 168" (i.e., tracts in any of the three royalty suspension areas) will provide for a yearly rental payment of \$7.50 per acre or fraction thereof until initial production is obtained. This map is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

All leases awarded on other tracts (i.e., those in water depths of less than 200 meters) will provide for a yearly rental payment of \$5.00 per acre or fraction thereof until initial production is obtained.

(c) *Bidding Systems.* After initial production is obtained, leases will provide for a minimum royalty of the amount per acre or fraction thereof as specified as the yearly rental in paragraph 4(b) above, except during periods of royalty suspension as discussed in paragraph 4(c)(3) of this Notice. The following royalty systems will be used in this sale:

(1) *Leases with a 12½-Percent Royalty.* This royalty rate applies to tracts in water depths of 400 meters or greater; this area is shown on the Map "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 168" applicable to this Notice (see paragraph 13). Leases issued on the tracts offered in this area will have a fixed royalty rate of 12½ percent, except during periods of royalty suspension (see paragraph 4(c)(3) of this Notice).

(2) *Leases with a 16⅔-Percent Royalty.* This royalty rate applies to tracts in water depths of less than 400 meters (see aforementioned map). Leases issued on the tracts offered in this area will have a fixed royalty rate of 16⅔ percent, except during periods of royalty suspension for leases in water depths 200 meters or greater (see paragraph 4(c)(3) of this Notice).

(3) *Royalty Suspension.* In accordance with Public Law 104-58, signed by the President on November 28, 1995, MMS has developed procedures providing for the suspension of royalty payments on production from eligible leases issued as a result of this sale. MMS will allow only one royalty suspension volume per field regardless of the number of eligible leases producing the field. For purposes of this paragraph, an eligible lease is one that: is located in the Gulf of Mexico in water depths 200 meters or deeper; lies wholly west of 87 degrees, 30 minutes West longitude; and is offered subject to a royalty suspension volume authorized by statute.

An eligible lease from this sale may receive a royalty suspension volume only if it is in a field where no currently active lease produced oil or gas (other than test production) before November 28, 1995. The following applies only to eligible leases in fields meeting this condition.

(i) The royalty suspension volumes are:

- 17.5 million barrels of oil equivalent (mmboe) in 200 to 400 meters of water;
- 52.5 mmboe in 400 to 800 meters of water; and
- 87.5 mmboe in 800 meters of water and greater.

A map titled "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 168" depicting blocks in which such suspensions may apply is currently available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

(ii) When production first occurs from any of the eligible leases in a field (not including test production), MMS will determine the royalty suspension volume applicable to eligible lease(s) in that field. The determination is based on the royalty suspension volumes and the map specified in paragraph 4(c)(3)(i) above.

(iii) If a new field consists of eligible leases in different water depth categories, the royalty suspension volume associated with the deepest eligible lease applies.

(iv) If an eligible lease is the only eligible lease in a field, royalty is not owed on the production from the lease up to the amount of the applicable royalty suspension volume.

(v) If a field consists of more than one eligible lease, payment of royalties on the eligible leases' initial production is suspended until their cumulative production equals the field's established royalty suspension volume. The royalty suspension volume for each eligible lease is equal to each lease's actual production (or production allocated under an approved unit agreement) until the field's established royalty suspension volume is reached.

(vi) If an eligible lease is added to a field that has an established royalty suspension volume, the field's royalty suspension volume will not change even if the added lease is in deeper water. The additional lease may receive a royalty suspension volume only to the extent of its production before the cumulative production from all eligible leases in the field equals the field's previously established royalty suspension volume.

(vii) If MMS reassigns a well on an eligible lease to another field, the past production from that well will count toward the royalty suspension volume, if any, specified for the new field to which it is assigned. The past production will not be counted toward the suspension volume, if any, from the first field.

(viii) An eligible lease may receive a royalty suspension volume only if the entire lease is west of 87 degrees, 30 minutes West longitude. A field that lies on both sides of this meridian will receive a royalty suspension volume only for those eligible leases lying entirely west of the meridian.

(ix) An eligible lease may obtain more than one royalty suspension volume. If a new field is discovered on an eligible lease that already benefits from the royalty suspension volume for another field, production from that new field receives a separate royalty suspension.

(x) A lessee must measure natural gas production subject to the royalty suspension volume as follows: 5.62 thousand cubic feet of natural gas equals one barrel of oil equivalent, as measured fully saturated at 15.025 psi, 60 degrees F.

(xi) In any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds \$28.00 per barrel, royalties on the production of oil must be paid at the lease stipulated royalty rate (see paragraphs 4(c)(1) and (2) above), and production during such years counts toward the royalty suspension volume.

In any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds \$3.50 per million British thermal units, royalties on the production of natural gas must be paid at the lease stipulated royalty rate (see paragraphs 4(c)(1) and (2) above), and production during such years counts toward the royalty suspension volume.

These prices for oil and natural gas are as of the end of 1994, and must be adjusted for subsequent years by the percentage by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(xii) A royalty suspension will continue until the end of the month in which the cumulative production from eligible leases in the field reaches the royalty suspension volume for the field.

Paragraph 14(l), *Information to Lessees*, contains additional information pertaining to royalty suspension matters.

5. *Equal Opportunity*. The certification required by 41 CFR 60-

1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985) must be on file in the MMS Gulf of Mexico Regional Office prior to lease award (see paragraph 14(e)).

6. *Bid Opening*. Bid opening will begin at the bid opening times stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time.

7. *Deposit of Payment*. Any cash, cashier's checks, certified checks, or bank drafts submitted with high bids, and any EFT payments made in accordance with Paragraph 3(a)(2) above, will be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts*. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for the tract.

9. *Acceptance, Rejection, or Return of Bids*. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any tract will be awarded to any bidder, unless:

(a) The bidder has complied with all requirements of this Notice and applicable regulations;

(b) The bid is the highest valid bid; and

(c) The amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of \$25.00 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, tracts will be evaluated in accordance with established MMS bid adequacy procedures. A copy of the current procedures ("Summary of Procedures for Determining Bid Adequacy at Offshore Oil and Gas Lease Sales: Effective August 1997, with Sale 168") is available from the MMS Gulf of Mexico Regional Office Public

Information Unit (see paragraph 14(a) of this Notice).

Please Note: MMS recently made modifications to its process for bid adequacy determination. These changes affect Sale 168 and were announced in a **Federal Register** Notice at 62 FR 37589, dated July 14, 1997, and are included in the Summary document mentioned above available from the Gulf of Mexico Regional Office Public Information Unit.

10. *Successful Bidders.* The following requirements apply to successful bidders in this sale:

(a) *Lease Issuance.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease (Form MMS-2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended.

Paragraphs 14(m), (n), and (q), *Information to Lessees*, contain additional information pertaining to this matter.

(b) *Certification Regarding Nonprocurement Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* Each person involved as a bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, a subsequent certification is required before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 C.F.R., Part 12, Subpart D, as amended in the **Federal Register** of June 26, 1995, at 60 FR 33035.

Copies of the certification form are available from the MMS Gulf of Mexico Regional Office Public Information Unit. See Paragraph 14(a) of this Notice for directions on how to obtain the forms.

11. *Leasing Maps and Official Protraction Diagrams.* Tracts offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)):

(a) OCS Leasing Maps—Texas, Nos. 1 through 8. This is a set of 16 maps which sells for \$18.00.

(b) OCS Official Protraction Diagrams. These diagrams sell for \$2.00 each.

- NG 14-3 Corpus Christi (rev. 01/27/76)
- NG 14-6 Port Isabel (rev. 01/15/92)
- NG 15-1 East Breaks (rev. 01/27/76)
- NG 15-2 Garden Banks (rev. 10/19/81)
- NG 15-4 Alaminos Canyon (rev. 04/27/89)
- NG 15-5 Keathley Canyon (rev. 04/27/89)
- NG 15-8 (No Name) (rev. 04/27/89)

12. *Description of the Areas Offered for Bids.*

(a) *Acreage Available for Leasing.* Acreage of blocks is shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document as a part of the Sale Notice Package and is currently available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)):

Western Gulf of Mexico Lease Sale 168—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Tracts not available for leasing.* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a) and (b), except for those blocks or partial blocks already under lease and those blocks or partial blocks listed below. A list of Western Gulf of Mexico tracts currently under lease is included in the Sale Notice Package available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)).

(1) Although currently unleased, no bids will be accepted on High Island Area, East Addition, South Extension, Blocks A-375 and A-398 (at the Flower Garden Banks).

(2) Although currently unleased, no bids will be accepted on the following blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel: Mustang Island Area Blocks 793, 799, and 816.

(3) Although currently unleased, no bids will be accepted on the following blocks which are currently under appeal: High Island Area Block 170, and Galveston Area, South Addition, Block A-125.

13. *Lease Terms and Stipulations.* (a) Leases resulting from this sale will have initial terms as shown on the map "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 168." Copies of the map and lease form are available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the map "Stipulations and Deferred Blocks, Sale 168" and as supplemented by references in this Notice.

Stipulation No. 1—Topographic Features.

(This stipulation will be included in leases located in the areas so indicated in the Biological Stipulation Map Package associated with this Notice which is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)).)

The banks that cause this stipulation to be applied to blocks of the Western Gulf are:

Bank name	No activity zone defined by Isobath (meters)
Shelf Edge Banks:	
West Flower Garden Bank.	100 (Defined by 1/4 1/4 1/4 system)
East Flower Garden Bank.	100 (Defined by 1/4 1/4 1/4 system)
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank ¹	85
McGrail Bank ¹	85
Rezak Bank ¹	85
Sidner Bank ¹	85
Parker Bank ¹	85
Stetson Bank	52
Appelbaum Bank ...	85
Low Relief Banks: ²	
Mysterious Bank	74, 76, 78, 80, 84
Coffee Lump	Various
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank ³	50
South Texas Banks ⁴	
Dream Bank	78, 82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

¹ Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

² Low Relief Banks—Only paragraph (a) applies.

³Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b), monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

⁴South Texas Banks—Only paragraphs (a) and (b) apply.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.) This restriction on operations also applies to areas surrounding the Flower Garden Banks National Marine Sanctuary, namely the "4-Mile Zone" surrounding the East Flower Garden Bank and the West Flower Garden Bank.

(d) Operations within the area shown as "3-Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 2—Military Areas.

(This stipulation will be included in leases located within the Warning Areas as shown on the map described in paragraph 13(b).)

(a) Hold and Save Harmless.

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the OCS, to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage

to such person or property occurs by reason of the activities of any agency of the United States Government, its contractors or subcontractors, or any of its officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed at the end of this stipulation.

Notwithstanding any limitation of the lessee's liability in Section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions.

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees,

independent contractors or subcontractors and onshore facilities.

(c) Operational.

The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following list, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats, ships, and aircraft operating into the warning areas at all times.

W-228—Chief, Naval Air Training,
Naval Air Station, Office No. 206,
Corpus Christi, Texas 78419-5100,
Telephone: (512) 939-3862/3902
W-602—Headquarters ACC/DOSR,
Detachment 1, Operations
Headquarters, Air Combat Command,
Offutt AFB, Nebraska 68113-5550,
Telephone: (402) 294-2334

Stipulation No. 3—Operations in the Naval Mine Warfare Area

(This stipulation will apply to Mustang Island Area East Addition Blocks 732, 733, and 734.)

(a) The placement, location, and planned periods of operation of surface structures on this lease during the exploration stage are subject to approval by the RD, MMS Gulf of Mexico Region, after the review of the operator's Exploration Plan (EP). Prior to approval of the EP, the RD will consult with the Commander, Mine Warfare Command, in order to determine the EP's compatibility with scheduled military operations. No permanent structures nor debris of any kind shall be allowed in the area covered by this lease during exploration operations.

(b) To the extent possible, sub-seafloor development operations for resources subsurface to this area should originate outside the area covered by this lease. Any above-seafloor development operations within the area covered by this lease must be compatible with scheduled military operations as determined by the Commander, Mine Warfare Command. The lessee will consult with and coordinate plans for above-seafloor development activities (including abandonment) with the Commander, Mine Warfare Command. The Development Operations Coordination Document (DOCD) must contain the locations of any permanent structures, fixed platforms, pipelines, or anchors planned to be constructed or placed in the area covered by this lease as part of such development operations. The DOCD must also contain the written

comments of the Commander, Mine Warfare Command on the proposed activities. Prior to the approval of the DOCD, the RD will consult with the Commander in order to determine the DOCD's compatibility with scheduled military operations. For more information, consultation, and coordination, the lessee must contact: Commander, Mine Warfare Command, 325 Fifth Street, S.E., Corpus Christi, Texas 78419-5032, Phone: (512) 939-4895

14. Information to Lessees.

(a) *Supplemental Documents.* For copies of the various documents identified as available from the MMS Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone at (504) 736-2519 or (800) 200-GULF. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Bill Daughdrill, Chief of Facility and Offshore Compliance Section, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589-6901. For COE information, prospective bidders should contact Mr. Dan Nannings, Chief Evaluation Section, Regulatory Branch, Post Office Box 1229, Galveston, Texas 77553, (409) 766-3938.

(c) *Offshore Pipelines.* Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding (MOU), dated December 10, 1996, concerning the design, installation, operations, inspection, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable

to offshore pipelines. This recently revised MOU is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be canceled shortly after the end of the fifth year, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect. Furthermore, a rental payment for the sixth year will be due despite the cancellation. Bidders are referred to 30 CFR 256.37 and the MMS Gulf of Mexico Regional Office Letter to Lessees and Operators of February 13, 1995.

(e) *Affirmative Action.* Lessees are advised that they must adhere to the rules of the Department of Labor, Office of Federal Contract Compliance, at 41 CFR Chapter 60. Companies with questions regarding those rules should contact one of the various regional Department of Labor Offices of Federal Contract Compliance.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on the map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

(g) *Archaeological Resources.* Bidders are referred to the regulations at 30 CFR 250.26 (Archaeological Reports and Surveys). MMS Notice to Lessees (NTL) 91-02 (Outer Continental Shelf Archaeological Resources Requirements for the Gulf of Mexico OCS Region) published in the **Federal Register** on December 20, 1991, (56 FR 66076) effective February 17, 1992, specifies remote sensing instrumentation survey methodology, linespacing, and archaeological report writing requirements for lessees and operators in the Gulf of Mexico Region. Three additional documents are available from the MMS Gulf of Mexico Regional Office

Public Information Unit (see paragraph 14(a)):

"List of Lease Blocks Within the High-Probability Area for Historic Period Shipwrecks on the OCS" dated May 22, 1995, (including an Errata Sheet II dated April 16, 1997). This list supersedes the list promulgated by the MMS Letter to Lessees (LTL) of November 30, 1990.

"List of Lease Blocks Within the High-Probability Area for Prehistoric Archaeological Resources on the OCS" dated May 22, 1995.

MMS Gulf of Mexico Regional Office Letter to Lessees and Operators of March 17, 1996, which contains a list of lease blocks within the High-Probability Areas for both Historic Period Shipwrecks and Prehistoric Archaeological Resources on the OCS that were formerly "grandfathered" but which may now require archaeological surveys.

(h) *Proposed Artificial Reefs/Rigs-to-Reefs.* Bidders are advised that there are OCS artificial reef planning and general permit areas, and reef sites for the Gulf of Mexico. These are located in water depths of less than 200 meters. While all artificial reef sites require a permit from the COE, the Artificial Reefs program is implemented through State sponsorship through the following State Coordinators:

Alabama Mr. Steve Heath, (334) 968-7576

Florida Mr. Jon Dodrill, (904) 922-4340

Louisiana Mr. Rick Kasprzak, (504) 765-2375

Mississippi Mr. Mike Buchanan, (601) 385-5860

Texas Ms. Jan Culbertson, (281) 474-1418

For more information, on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinators for their areas of interest.

(i) *Proposed Lightering Zones.* Bidders are advised that the U.S. Coast Guard has designated certain areas of the Gulf of Mexico (60 FR 45006 of August 29, 1995), as lightering zones for the purpose of permitting single hull vessels to off-load oil within the U.S. Exclusive Economic Zone. Such designation may have implications for oil and gas operations in the areas. Additional information may be obtained from Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act of 1990 (OPA) Staff, at (202) 267-6740.

(j) *Statement Regarding Certain Geophysical Data.* Pursuant to Sections 18 and 26 of the OCS Lands Act, as amended, and the regulations issued thereunder, MMS has a right of access to certain geophysical data and

information obtained or developed as a result of operations on the OCS. MMS is sensitive to the concerns expressed by industry regarding the confidentiality of individual company work products and client lists and the potential burden of responding to a myriad of requests from MMS pertaining to the existence and availability of these types of reprocessed geophysical data. To resolve the concerns of both industry and MMS with respect to such cases, MMS has worked with industry to develop the requirements contained within paragraph 3(c) *Method of Bidding* above. MMS modified the previous procedure to require that bidders who are in possession of the requested data, now identify the specific data by line name or 3D phase. This has helped MMS in identifying time data that may have already been in our data base and at the same time has not imposed undue burden on industry by rerequesting the data. All requirements are being imposed on a trial basis to determine their effectiveness and are subject to further modification in future sales.

The details of this requirement are specified in the document "Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico" (revised January 19, 1996) which is available upon request from the MMS Gulf of Mexico Region Public Information Unit (see paragraph 14(a)). In brief, these requirements include:

(1) In the period for ninety (90) days after the sale, bidders will allow MMS to inspect such data within seven (7) days of a written request from MMS, and upon further written request will transmit to MMS, within ten (10) working days, such data. After this ninety (90) day period, a response time of thirty (30) days following an MMS written request will be considered adequate.

(2) Successful bidders must retain such data for three (3) years after the sale, and unsuccessful bidders must retain such data for six (6) months after the sale, for possible acquisition by MMS.

For the six (6) month period after the sale, based on a review of the allowable cost of data reproduction to MMS for three-dimensional and two-dimensional data sets, the company providing the reprocessed data will be reimbursed at a rate of \$480 per block or part thereof for three-dimensional data and \$2 per line mile for two-dimensional data. Afterwards, reimbursement will be subject to the terms and conditions of 30 CFR 251.13(a).

All geophysical data and information obtained and reviewed by MMS pursuant to these procedures shall be

held in the strictest confidence and treated as proprietary in accordance with the applicable terms of 30 CFR 251.14.

For additional information, contact the MMS Gulf of Mexico Regional Office of Resource Evaluation at (504) 736-2720.

(k) *Information about Indicated Hydrocarbons.* Bidders are advised that MMS makes available, about 3 months prior to a lease sale, a list of unleased tracts having well bores with indicated hydrocarbons. Basic information relating to production, well bores, and pay range for each tract is included in the list. The list is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a)).

(l) *Royalty Relief.* The OCS Deep Water Royalty Relief Act authorizes the Secretary of the Interior to offer certain deepwater OCS tracts in the Central and Western Gulf of Mexico for lease with suspension of royalties for a volume, value, or period of production the Secretary determines. An interim rule was published in the **Federal Register** (61 FR 12022; March 25, 1996) that specifies the royalty suspension terms under which the Secretary will make tracts available for this sale. Bidders are advised to review that document for additional details on this matter. For further information, bidders may contact Mr. Walter Cruickshank of the MMS Offshore Minerals Analysis Division at (202) 208-3822.

A map titled "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 168" depicting blocks in which such suspensions may apply is currently available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

The publication "OCS Operations Field Names Master List" depicts currently established fields in the Gulf of Mexico. This document is updated monthly and reprinted quarterly. Copies may be obtained from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

(m) *Lease Instrument.* Bidders are advised that the lease instrument will include royalty relief provisions (paragraph 4(c)(3) of this Notice) and 8-year lease cancellation provisions (paragraph 14(d) of this Notice) where applicable. Leases will continue to be issued on Form MMS-2005 (March 1986) as amended.

(n) *Electronic Funds Transfer.* Bidders are advised that the 4/5ths and first year rental EFT instructions for lease payoff have been revised and updated by MMS

Royalty Management. Companies may now use either the Fedwire Deposit System or the Automated Clearing House (overnight payments). See paragraphs 3(a)(2) and 10(a) of this Notice.

(o) *Deepwater Operations Plans.* Bidders are advised that MMS Notice to Lessees (NTL) 96-4N, which became effective on August 19, 1996, requires that a Deepwater Operations Plan be submitted for all deepwater development projects (water depths greater than 304.8 meters (1,000 feet)) and for all projects utilizing subsea production technology; projects using conventional fixed-leg projects are exempted from this requirement. Copies of the NTL may be obtained from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 14(a) of this Notice).

(p) *Minimizing Oil and Gas Structures Near the Flower Garden Banks.* Bidders are reminded of Notice to Lessees and Operators (NTL) 85-8, "Minimizing Oil and Gas Structures in the Gulf of Mexico," dated November 26, 1985. Section II of the NTL sets forth the MMS' policy with regard to the minimization of structures for drilling, development, and production on OCS leases. The policy requires that such structures including lease-term pipelines be placed in a manner that causes minimum interference with other significant uses of the OCS. Please be advised that the MMS will strictly adhere to this policy when reviewing Exploration Plans and Development Operations Coordination Documents which propose the use or installation of such structures within the "Four-Mile Zone" and adjacent areas surrounding the Flower Garden Banks National Marine Sanctuary.

(q) *New Bonding Requirements.* MMS promulgated revisions to the surety bond program on May 22, 1997 (62 FR 27948): "Surety Bonds for Outer Continental Shelf Leases." The revisions to the surety bond program provide for the following:

(1) Establishes December 8, 1997, as the deadline for every lessee to comply with the bond coverage requirements established in the rule published August 27, 1993 (58 FR 45255).

(2) Clarifies the MMS position that co-lessees and operating rights owners are jointly and severally liable for compliance with our regulations and the terms and conditions of their OCS oil and gas and sulphur lease for non-monetary obligations.

(3) Clarifies the MMS position that an assignor of an OCS lease remains responsible for compliance with the lease abandonment obligations

associated with wells drilled or used while the assignor was lessee.

(4) Establishes regulatory frameworks for acceptance of lease-specific abandonment accounts and third-party guarantees.

(5) Sets a higher more realistic level of bond coverage to be required of the holder of a G&G exploration permit to drill a deep stratigraphic test well and authorizes a demand for a supplemental bond from the holder of a G&G permit or pipeline right-of-way.

This rule is the product of MMS efforts to write regulations in plain English and continues attempts to provide optimum flexibility for a lessee to meet lease bond requirements and ensure that lessees adequately fund their end-of-lease obligations.

Objectives for this rule are to: (1) ensure a lessee's financial capability to perform its lease obligations; (2) protect the environment from threat of harm that might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations; (3) achieve a reasonable degree of protection from default by a lessee, permittee, or pipeline right-of-way holder at a minimum increase in costs for lease, permit, or pipeline operations; and (4) select a method for attaining those goals that equitably affect all parties.

(r) *Proposed Rule: Oil Spill Financial Responsibility for Offshore Facilities.* Bidders should note that MMS published in the **Federal Register** a proposed rule to implement a financial responsibility provision of the Oil Pollution Act of 1990 (OPA). The proposal, which appears at 62 FR 14052 on March 25, 1997, requires those responsible for offshore oil facilities to demonstrate that they can pay for cleanup and damages caused by facility oil spills. The proposed rule applies to oil exploration, production, and pipeline facilities located along and seaward of the U.S. coastline. The proposal reflects recent changes to OPA that more precisely define the scope of the oil spill financial responsibility requirement in terms of geographic limitations, types of facilities affected, and the dollar amounts of responsibility that must be demonstrated. Public comments on the proposed financial responsibility regulation were due June 23, 1997. A final regulation should be published by the end of the year.

(s) *Final Rule: Response Plans for Facilities Located Seaward of the Coast Line.* Bidders should note that MMS published in the **Federal Register** a final rule at 62 FR 13991 on March 25, 1997, to implement the facility response planning provision of Oil Pollution Act

of 1990 (OPA). The rule, which supersedes an interim rule in effect since February 18, 1993, allows one plan to be used to cover multiple offshore facilities; thus allowing operators to reduce the cost of spill response compliance without sacrificing environmental protection. The final rule also permits the use of the National Response Team's Integrated Contingency Plan Guidance when preparing a plan for MMS review. This guidance allows facility owners to consolidate multiple plans required by various agencies into one functional response plan, thereby minimizing duplication.

Dated: July 28, 1997.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved:

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 97-19465 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico; Notice of Leasing Systems, Sale 168

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 168, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)), as amended: (a) Bonus bidding with a fixed 16 $\frac{2}{3}$ -percent royalty on all unleased blocks in less than 200 meters of water; and (b)(i) bonus bidding with a fixed 16 $\frac{2}{3}$ -percent royalty on all unleased blocks in 200 to 400 meters of water with potential for a royalty suspension volume of up to 17.5 million barrels of oil equivalent; (ii) bonus bidding with a fixed 12 $\frac{1}{2}$ -percent royalty on all unleased blocks in 400 to 800 meters of water with potential for a royalty suspension volume of up to 52.5 million barrels of oil equivalent; and

(iii) bonus bidding with a fixed 12 $\frac{1}{2}$ -percent royalty on all unleased blocks in water depths of 800 meters or more with potential for a royalty suspension volume of up to 87.5 million barrels of oil equivalent.

For bidding systems (b) (i), (ii), and (iii), the royalty suspension allocation rules are described in the Interim Rule (30 CFR Part 260) addressing royalty relief for new leases that was published in the **Federal Register** on March 25, 1996 (61 FR 12022).

a. *Bonus Bidding with a 16 $\frac{2}{3}$ -Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. (i) *Bonus bidding with a 16 $\frac{2}{3}$ -Percent Royalty and a Royalty Suspension Volume (17.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. This system complies with Sec. 304 of the Outer Continental Shelf Deep Water Royalty Relief Act (DWRRA). An incentive for development and production in water depths of 200 to 400 meters is provided through allocating royalty suspension volumes of 17.5 million barrels of oil equivalent to eligible fields.

b. (ii) *Bonus Bidding with a 12 $\frac{1}{2}$ -Percent Royalty and a Royalty Suspension Volume (52.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. It has been chosen for blocks of water depths of 400 to 800 meters proposed for the Western Gulf of Mexico (Sale 168) to comply with Sec. 304 of the DWRRA. The 12 $\frac{1}{2}$ -percent royalty rate is used in deeper water because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. The use of a royalty suspension volume of 52.5 million barrels of oil equivalent for eligible fields provides an incentive for development and production appropriate for this water depth category.

b. (iii) *Bonus Bidding with a 12 $\frac{1}{2}$ -Percent Royalty and a Royalty Suspension Volume (87.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. It has been chosen for blocks in water depths of 800 meters

or more proposed for the Western Gulf of Mexico (Sale 168) to comply with Sec. 304 of the DWRRA. The use of a royalty suspension volume of 87.5 million barrels of oil equivalent for eligible fields provides an incentive for development and production appropriate for these deep-water depths.

2. *Designation of Blocks.* The selection of blocks to be offered under the four systems was based on the following factors:

a. Royalty rates on adjacent, previously leased tracts were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas in past sales.

c. The royalty suspension volumes were based on the water depth specific volumes mandated by the DWRRA.

The specific blocks to be offered under each system are shown on the "Stipulations, Lease Terms, and Bidding Systems" and "Royalty Suspension Areas for the Western Gulf of Mexico" maps for Western Gulf of Mexico Lease Sale 168. These maps are available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved: July 18, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 97-19503 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on April 28, 1997. The February 10, 1997, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities.

Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT:

Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225-0007; telephone 303-236-1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1997. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and

conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP)—Boulder Canyon Project
 (CAP)—Central Arizona Project
 (CUP)—Central Utah Project
 (CVP)—Central Valley Project
 (CRSP)—Colorado River Storage Project
 (D&MC)—Drainage and Minor Construction
 (FR)—Federal Register
 (IDD)—Irrigation and Drainage District
 (ID)—Irrigation District

(M&I)—Municipal and Industrial
(O&M)—Operation and Maintenance
(P—SMBP)—Pick-Sloan Missouri Basin
Program
(R&B)—Rehabilitation and Betterment
(PPR)—Present Perfected Right
(RRA)—Reclamation Reform Act
(NEPA)—National Environmental Policy
Act
(SOD)—Safety of Dams
(SRPA)—Small Reclamation Projects
Act
(WCUA)—Water Conservation and
Utilization Act
(WD)—Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the April 28, 1997, **Federal Register** notice:

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706-1234, telephone 208-378-5346.

Modified contract actions:

4. Lower Payette Ditch Company Ltd., Pioneer Ditch Company, Boise Project, Idaho; Tumalo ID, Crescent Lake Dam Project, Oregon; Sigmans, Crooked River Project, Oregon; Monroe Creek ID, Mann Creek Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Pub. L. 97-293).

21. Hermiston, Stanfield, Westland, and West Extension IDs, Umatilla Project, Oregon: Temporary contracts to provide water service for 1997 to lands lying outside of their boundaries. Contracts for 1997 have been executed with Hermiston, Stanfield, and Westland IDs; a contract for 1997 has not been negotiated with West Extension ID.

24. J.R. Simplot Company Partners, Boise Project, Idaho: Long-term contract for 3,000 acre-feet of Anderson Ranch Reservoir storage for M&I use.

25. Eagle Island Water Users Association, Inc., Boise Project, Idaho: Amendment of water service contract to reduce the Association's spaceholding in Lucky Peak Reservoir by approximately 5,300 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

24. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment of storage contracts to reduce the district's

spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

Contract actions completed:

21. Hermiston, Stanfield, Westland, and West Extension IDs, Umatilla Project, Oregon: Temporary contracts to provide water service for 1997 to lands lying outside of their boundaries. Contracts for 1997 have been executed with Hermiston, Stanfield, and Westland IDs; a contract for 1997 has not been negotiated with West Extension ID.

Correction:

22. Burley ID, Minidoka Project, Idaho: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water. This contract action has not been completed and is still pending.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916-979-2401.

New contract actions:

28. Contractors from the Friant Division, CVP, California: Negotiation of interim renewal contracts with 14 of the Friant Division contractors, who are parties to long-term water service contracts, which were recently declared invalid by the United States District Court, effective March 1, 1998. The total annual quantity of water allocated pursuant to these contracts is in excess of 1.3M acre-feet. These contracts will be replaced with interim renewal contracts negotiated pursuant to the Central Valley Project Improvement Act, Title XXXIV, of Pub. L. 102-575.

Contract actions completed:

18. Santa Clara Valley WD, CVP, California: Agreement for the conditional reallocation of a portion of Santa Clara Valley WD's annual CVP contract water supply to San Luis and Delta-Mendota Water Authority members. The purpose of the conditional reallocation is to improve overall management and establish more reliable water supplies without imposing additional demands or operational changes upon the CVP. Action: Agreement No. 7-07-20-W1428 executed on April 17, 1997.

19. Central Coast Water Authority, Cachuma Project, California: Amendment to the Warren Act contract to change the definition of contract year. This amendment will make the Warren Act contract consistent with the contract year in the Santa Barbara County Water Agency's renewed water service contract. Action: Contract No. 5-07-20-W1282A executed on June 2, 1997.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada

Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8536.

New contract actions:

62. Bureau of Land Management, BCP, California: Agreement for 1,000 acre-feet of Colorado River water in accordance with a Secretarial Reservation dated August 30, 1973.

Contract actions modified:

54. Arizona State Lands, BCP, Arizona: Water delivery contract with Lakeview City for 400 acre-feet of Colorado River water for domestic use.

Contract actions discontinued:

49. Santa Ana Project Water Shed Authority, SRPA, California: Amend current contract with United States to shorten repayment schedule from 30 to 20 years.

Contract actions completed:

44. Community Water Company of Green Valley/New Pueblo Water Co., CAP, Arizona: Execute an assignment assigning 237 acre-feet of New Pueblo's CAP water entitlement to Community. Amend Community's CAP subcontract to increase its entitlement by 237 acre-feet and upon execution of the assignment from New Pueblo to Community, New Pueblo's CAP water service subcontract terminates.

50. Elsinore Valley Municipal WD, SRPA, California: Amend current contract with United States to transfer certain project facilities and certain O&M responsibilities from District to City of Lake Elsinore.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, telephone 801-524-4419.

New contract actions:

1.(e) Lazear Domestic Water Corporation: Aspinall Unit, CRSP; Colorado: Contract for 44 acre-feet to support an augmentation plan, Case No. 95CW209, Water Division Court No. 4, State of Colorado, to provide domestic water service to up to 100 residences, lawns, gardens, and livestock watering.

22. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for SOD modification of Lost Creek Dam. The estimated cost of the modification is \$16,000,000 of which 15 percent must be repaid from both irrigation and M&I use.

23. El Paso County Water Improvement District No. 1, Rio Grande Project, Texas and New Mexico: Supplemental contract between El Paso County Water Improvement District No. 1 and the United States to allow the conversion of project water from irrigation to M&I within the El Paso area.

24. Individual Irrigators, Dolores Project, Colorado: The United States proposes to lease up to 1,500 acre-feet of project water declared surplus under the authority of the Warren Act of 1911.

Contract actions completed:

1.(c) Dr. Henry Estess: Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 30 acre-feet of M&I water from Blue Mesa Reservoir for augmentation to replace evaporative losses from a fishery/wildlife area on his property.

1.(d) Crested Butte South Metropolitan District: Aspinall Unit, CRSP, Colorado: Contract for 13 acre-feet for domestic, municipal, and irrigation (including irrigation of lawns and golf course).

17. Highland Conservation District, Provo River Project, Utah: Water transfer agreement between District and Highland City involving change of use from irrigation to M&I.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107-6900, telephone 406-247-7730.

New contract actions:

29. Angostura ID, Angostura Unit, P-SMBP, South Dakota: The District had a contract for water service which expired on December 31, 1995. An interim 3-year contract provides for a continuing water supply and the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility.

30. Glendo Unit, P-SMBP, Wyoming: Initiate negotiations for renewal of long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company. The current contracts expire in 1998.

31. Glendo Unit, P-SMBP, Nebraska: Initiate negotiations for renewal of long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID. The current contracts expire in 1998.

32. Belle Fourche Unit, P-SMBP, South Dakota: Basis of negotiation has been submitted requesting deferment of the Belle Fourche ID's 1997 construction payment and also reduction of the District's annual payment.

Contract actions modified:

12. Enders Dam, Frenchman-Cambridge Division, Frenchman Unit, Nebraska: Repayment contract for proposed SOD modifications to Enders Dam for repair of seeping drainage features. Estimated cost of the repairs is \$632,000. Approval has been obtained

to modify the repayment period of the SOD costs for up to 10 years. Repayment contracts for the SOD repairs have been signed.

17. Canyon Ferry Unit, P-SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires June 1997. Basis of negotiation completed for renewal of existing contract for an additional 10 years. A temporary contract has been issued pending negotiation of the long-term contract for water service.

18. P-SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Pub. L. 104-326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

Dated: July 17, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 97-19440 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-94-P

DEPARTMENT OF JUSTICE

[AG Order No. 2097-97]

Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits

AGENCY: Department of Justice.

ACTION: Notice of Determination with request for comments.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are "qualified aliens" eligible for certain federal, state, and local public benefits. To be qualified under this provision an alien must demonstrate, among other things, that there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought. The PRWORA vests in the Attorney General the authority to determine under what circumstances there is a substantial connection between the battery or extreme cruelty suffered by an alien seeking federal, state, or local public benefits and the specific benefits sought by the alien. Through this notice, the Attorney General is declaring what circumstances demonstrate such a substantial connection.

DATES: This Determination is effective July 17, 1997.

ADDRESSES: Comments should be submitted to Diane Rosenfeld, Senior Counsel, The Violence Against Women Office, United States Department of Justice, 950 Pennsylvania Ave., Washington, DC 20530, (202) 616-8894.

FOR FURTHER INFORMATION CONTACT: Diane Rosenfeld, Senior Counsel, The Violence Against Women Office, 950 Pennsylvania Ave., Washington, DC 20530, (202) 616-8894.

SUPPLEMENTARY INFORMATION: Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. 104-193, as added by the Illegal Immigration Reform and Immigrant, Responsibility Act of 1996, Pub. L. 104-208, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are "qualified aliens" eligible for certain federal, state, and local public benefits. To be a qualified alien under this provision, an alien must demonstrate that: (1) The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application filed by or on behalf of the alien or the alien's child under one of several subsections of the Immigration and Nationality Act, or has found that a pending petition or application sets forth a prima facie case; (2) the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered child, the alien did not actively participate in the battery or cruelty; (3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought; and (4) the battered alien or child no longer resides in the same household as the abuser.

The Attorney General has the responsibility for determining the circumstances under which an alien has demonstrated a substantial connection between the battery or extreme cruelty and the alien's need for particular benefits. This Determination sets forth the circumstances that, in the Attorney General's opinion, demonstrate the requisite substantial connection. Under PRWORA, the Attorney General's opinion is not subject to review. When drafting this Determination, the Attorney General consulted with federal benefit-granting agencies that will be implementing section 431(c) of

PRWORA and with other interested parties.

Benefit providers and all other interested parties are requested to provide comments on this Determination. Should these comments indicate that further refinements to the Determination are necessary, it will be revised accordingly.

Delay in the effectiveness of this Determination would necessarily cause further delays in the availability of federal, state, and local public benefits to aliens for whom there is a substantial connection between the battery or extreme cruelty and the need for those public benefits. It would be unnecessary and contrary to the public interest to impose further delays on the availability of such public benefits in these circumstances. Accordingly, I find that there is good cause to exempt this Determination from prior public notice and comment and delay in effective date. This Determination is not a "significant regulatory action" under Executive Order 12866 and is not a "major rule" under 5 U.S.C. 804.

Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits

By virtue of the authority vested in me as Attorney General by law, including section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, I hereby determine that an alien applying for federal, state, or local public benefits who (or whose child) has been battered or subjected to extreme cruelty demonstrates that there is a substantial connection between the battery or extreme cruelty suffered by the alien (or the alien's child) and the need for the public benefit(s) sought under any one or more of the following circumstances:

(1) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;

(2) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;

(3) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

(4) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings

relating thereto (including resulting child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

(5) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

(6) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the aliens' ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

(7) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

(8) Where the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien or his or her child, and/or to care for any resulting children; or

(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

In the event that the facts presented by the alien are different from the situations described above, but the benefit provider or the applicant nevertheless believes that the applicant satisfies the substantial connection requirement, either the benefit provider or the applicant should obtain a determination from the Department of Justice as to whether, in the Attorney General's opinion, the applicant's need for the benefit is substantially connected to the battery or cruelty. Benefit providers or applicants requiring such a determination should contact the Violence Against Women Office, U.S. Department of Justice, the Director of which is hereby authorized to issue such determinations.

Dated: July 17, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97-19431 Filed 7-23-97; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on June 23, 1997, a proposed Consent Decree in *United States v. Town of Cheshire*, Civil No. 97cv30141-MAP (D. Mass.), was lodged with the United States District Court for the District of Massachusetts resolving the matter. The proposed Consent Decree concerns violations by the Town of Cheshire, Massachusetts, of the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, the National Primary Drinking Water Regulations, 40 CFR Part 141, and the provisions of the EPA Administrative Order issued to the Town on September 30, 1994. The violations alleged in the complaint include the failure by the Town to install filtration treatment (or to switch to use of a groundwater source not under the direct influence of surface water) within 18 months, i.e., by June 29, 1993, as required by the Surface Water Treatment Rule (the "SWTR"), Section 1412(b)(7), 42 U.S.C. § 300g-1(b)(7), and 40 CFR § 141.70-141.75; the failure to comply with the turbidity requirements of the SWTR, 40 CFR § 141.71(c)(2); the failure to comply with monitoring and reporting requirements at 40 CFR §§ 141.74, 141.75, and the failure to comply with public notification requirements at 40 CFR §§ 141.32(a)(1) (i) and (ii) and 141.31(d).

Under the terms of the Consent Decree, the defendant will pay a total civil penalty of \$18,500 for its past violations. In addition, the Consent Decree requires the Town to design and construct a new gravel-packed well to supply drinking water to the users of its public system and to comply with all applicable federal and state drinking water laws and regulations in accordance with an expeditious schedule.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Town of Cheshire*, D.J. Ref. 90-5-1-1-4361.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts.

Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$17.75 (25 cents per page reproduction cost for the Consent Decree excluding Appendices) made payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section.

[FR Doc. 97-19432 Filed 7-23-97; 8:45 am]

BILLING CODE 4410-15-M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS:

Mississippi River Commission.

Time and Date: 8:30 a.m., August 11, 1997.

Place: On board MISSISSIPPI V at Lambert's Landing, St. Paul, MN.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

Time and Date: 3:00 p.m., August 13, 1997.

Place: On board MISSISSIPPI V at Oneida Landing, Davenport, IA.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

Time and Date: 10:30 a.m., August 15, 1997.

Place: On board MISSISSIPPI V at Foot of Market Street, St. Louis, MO.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of

Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

Time and Date: 9:00 a.m., August 18, 1997.

Place: On board MISSISSIPPI V at City Front, New Madrid, MO.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

Time and Date: 9:00 a.m., August 19, 1997.

Place: On board MISSISSIPPI V at Downtown Helena Harbor, Helena, AR.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

Time and Date: 9:00 a.m., August 20, 1997.

Place: On board MISSISSIPPI V at Lake Providence Harbor, Lake Providence, LA.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

Time and Date: 9:00 a.m., August 22, 1997.

Place: On board MISSISSIPPI V at City Front, Morgan City, LA.

Status: Open to the public.

Matters to be Considered: (1) Report on function and responsibilities of

Commission and a summary of regional and national issues affecting the Corps of Engineers and Commission projects and programs on Mississippi River and its tributaries; (2) District Commander's overview of current project issues; and (3) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps.

CONTACT PERSON FOR MORE INFORMATION: Mr. Noel D. Caldwell, telephone 601-634-5766.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97-19595 Filed 7-22-97; 10:12 am]

BILLING CODE 3710-PU-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97-099)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Lewis Research Center, 21000 Brookpark Road, Cleveland, Ohio 44135, telephone (216) 433-8855.

NASA Case No. LEW 20,008-1: Cold Gas in Through Flow and Reverse Flow Wave Rotors;

NASA Case No. LEW 16,411-1: High Temperature Solar Reflector, Its Preparation and Use.

Dated: July 15, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97-19519 Filed 7-23-97; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish

notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On May 30, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on July 17, 1997 to the following applicants:

Scott Drieschman, Permit No. 98-002.
Randall Davis, Permit No. 98-004.
Wayne Trivelpiece, Permit No. 98-005.
Robert Wharton, Permit No. 98-006.

Nadene G. Kennedy,
Permit Officer.

[FR Doc. 97-19448 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems (#1190); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date And Time: August 12, 1997, 8:00 a.m. to 4:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230, (703) 306-1371.

Type Of Meeting: Closed.

Contact Person: Dr. Raul Miranda, Program Director, Chemical Reaction Processes, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306-1371.

Purpose Of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY97 Professional Opportunities for Women in Research and Education (POWRE) Panel as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97-19526 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communication Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92-463, as amended). During the period August 11 through August 12, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Special Emphasis Panel in Electrical and Communication Systems (1196).

Date: August 11-12, 1997.

Contact: Dr. Deborah Crawford, Program Director, Division of Electrical and Communication Systems, Room 675, for Physical Foundations and Enabling Technologies Program, 703/306-1340.

Type of Proposal: NSF's POWRE program.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Directorate as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97-19521 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences; Committee of Visitors (1755).

Date and Time: August 21 and 22, 8:30 a.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 770.

Type of Meeting: Closed.

Contact Person: Dr. Clifford Jacobs, Head, University Corporation for Atmospheric

Research and Lower Atmospheric Facility Oversight Section; Division of Atmospheric Sciences; Room 775; 4201 Wilson Blvd., Arlington, VA 22230; telephone number (703) 306-1521.

Purpose of meeting: To carry out a Committee of Visitors' (COV) review, including examination of decision on proposals, reviewer comments, and other privileged materials.

Agenda: Review activities of the University Corporation for Atmospheric Research Lower Atmospheric Facility Oversight Section.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if disclosed. If discussions were open to the public, these matters that are exempted under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97-19522 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (#1756).

Date & Time: Monday, August 18-Thursday, August 21, 1996; 8:30 AM-5:00 PM.

Place: Room 365, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Don Rice, Program Director, Chemical Oceanography, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF/NASA for financial support.

Agenda: To review and evaluate proposals submitted to joint announcement of opportunity for the synthesis phase of JGOFS as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97-19523 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: August 18, 19 and 20, 8:30 a.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 770.

Type of Meeting: Closed.

Contact Person: Ms. Jewel Prendeville, Program Coordinator for the University Corporation for Atmospheric Research and Lower Atmospheric Facility Oversight Section; Division of Atmospheric Sciences; Room 775; 4201 Wilson Blvd, Arlington, VA 22230; telephone number (703) 306-1521.

Purpose of Meeting: To provide advice and recommendations concerning proposals as part of the selection process of awards.

Agenda: To review and evaluate Professional Opportunities for Women in Research and Education (POWRE) proposals as part of the selection process for awards.

Reason For closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated July 21, 1997.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 97-19524 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking & Communications Research & Infrastructure (1207).

Date and Time: August 21-22, 1997; 8:30 AM-5:00 PM.

Place: Rooms 1175 National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Blvd., Room 725, Arlington, VA 22230. Telephone: (703) 306-1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Reverse site visit to review and evaluate Very High-Speed Backbone Network Service (vBNS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97-19525 Filed 7-23-97; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-7580]

Finding of No Significant Impact and Notice of Opportunity for a Hearing on Renewal of Source Material License SMB-911 for Fansteel, Inc. in Muskogee, Oklahoma

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Finding of no significant impact and notice of opportunity for a hearing on renewal of source material license SMB-911 for Fansteel, Inc. in Muskogee, Oklahoma.

The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Source Material License SMB-911 for the recovery of Work in Progress (WIP) pond residues at the Fansteel, Inc. (Fansteel) plant located in Muskogee, Oklahoma. The facility will process on-site pond residues to recover valuable metals and to reduce the volume of on-site radioactive materials. The staff has determined not to prepare an environmental impact statement for the proposed action, because the renewal will not have a significant effect on the quality of the human environment for reasons described in the Environmental Assessment (EA).

Summary of the Environmental Assessment

Background

Fansteel has been licensed by the NRC to possess and use source materials at their Muskogee, Oklahoma plant since January 1967. Fansteel was authorized to process ore concentrates and tin slags in the production of refined tantalum products. Fansteel ceased operations in 1990, but on June 20, 1994, submitted a renewal application to reprocess WIP residues located on-site, which were generated as a result of the initial hydrofluoric acid digestion of the ore concentrates. The WIP process will isolate the radioactivity such that the bulk of the WIP material can be used commercially while minimizing the volume of material sent for radioactive waste disposal.

Fansteel's current license expired in July 1994. However, because Fansteel submitted a renewal application on June 20, 1994, the existing license continues to be effective until the application for renewal has been finally determined by the staff in accordance with the timely renewal provision of 10 CFR 40.42(a)(1).

On March 25, 1997, Fansteel was granted an amendment to their license to allow processing of the WIP residues. Renewal of the license was not completed at that time due to unresolved decommissioning issues. Specifically, Fansteel has proposed to dispose of contaminated soils in an on-site containment cell. An EA is currently under development by the NRC, which considers this disposal option. However, the NRC staff has determined that the issue of on-site disposal of contaminated soils will be resolved as a separate licensing action, and, therefore, the NRC staff is now considering renewal of the license.

An EA dated June 17, 1996, was prepared to support the March 25, 1997, WIP amendment and a FONSI was published in the **Federal Register** on June 24, 1996 (61 FR 32466). The scope of the EA included processing of the WIP material, associated waste treatment processes, as well as groundwater remediation. Because the scope of this EA includes all processes to be authorized in renewal of the Fansteel license, the FONSI for license renewal is based on the WIP amendment EA.

Following issuance of the amendment authorizing WIP processing, Fansteel indicated that in conjunction with recovery of metal values from the WIP residues Fansteel also plans to recover fluorides from the waste treatment ponds. This activity, like on-site

disposal of contaminated soils, was not covered under the WIP amendment or the EA. Therefore, it will not be authorized with renewal of the Fansteel license and, instead, will be considered as a separate licensing action following renewal. When the issues of on-site disposal and fluoride recovery are considered under separate licensing actions, the environmental impacts from these operations will be considered in conjunction with impacts from all operations at the site.

Identification of the Proposed Action

The proposed action is to renew Source Material License SMB-911 to allow Fansteel to retrieve and process WIP material from on-site ponds. Processing of the WIP material will recover tantalum, columbium (niobium), titanium, and scandium from the pond residues. This WIP material recovery will be achieved by a series of proprietary chemical processes to separate the remaining metals from the residues. Uranium and thorium will be separated from the other products as uranium and thorium hydroxides. Waste materials from this process contaminated with natural uranium and thorium will be packaged and stored for off-site disposal.

The proposed action does not include recovery of fluoride from the calcium fluoride materials in the waste treatment ponds at the site or on-site disposal of contaminated soils. These activities will be considered as separate licensing actions following renewal.

The Need for the Proposed Action

Renewal of the license is needed to allow Fansteel to process the WIP pond residues. The WIP process will isolate the radioactivity such that the bulk of the WIP material can be used commercially while minimizing the volume of material sent for radioactive waste disposal.

Environmental Impacts of the Proposed Action

Operation of the WIP recovery process at the Fansteel facility will result in airborne, liquid and solid effluents. Airborne effluents will be controlled through the use of appropriate filters and wet scrubbers, as necessary. Liquid effluents including scrubber liquids, laboratory waste-waters, and chemical processing waste-waters, will be treated through a waste-water treatment system prior to discharge to the Arkansas River through a permitted National Discharge and Elimination System (NPDES) outfall. Solid wastes from the WIP process will be packaged and stored for disposal at a licensed off-site facility.

Fansteel will monitor these effluent streams, as well as groundwater in 25 wells, to assess impacts from the facility and demonstrate compliance with appropriate NRC regulations.

In order to estimate human health impacts, a dose assessment was conducted as described in the EA. The total effective dose equivalent (TEDE) from inhalation of radionuclides emitted during WIP processing was estimated to be less than 0.01 mSv (1 mrem) per year to a hypothetical maximally exposed individual (MEI) located at the site boundary in the most frequent downwind direction. The TEDE to the MEI was also estimated for ingestion of water discharged to the Arkansas River, and was shown to be much less than 0.05 mSv (5 mrem) per year, due to the low concentration of radionuclides in the discharge as well as dilution in the river. These estimated doses are small fractions of the NRC limit specified in 10 CFR 20.1301 of 1.0 mSv (100 mrem) for members of the public.

The EA also considered impacts on the surrounding environment from the WIP operation. The facility is not expected to have an adverse impact on surface water, groundwater, or soil quality. In fact, there is expected to be a potential benefit, since removal of source material in the ponds will reduce the potential for groundwater, surface water, and soil contamination in the future. In addition, Fansteel has committed to continue remediation of past groundwater contamination from a pond leak in 1989 under the provisions of the renewed license.

Environmental impacts of the proposed action are described in greater detail in the EA dated June 17, 1996, and the associated FONSI published in the **Federal Register** on June 24, 1996 (61 FR 32466). The documents also include more detailed descriptions of Fansteel's effluent and environmental monitoring programs, as well as a discussion of possible doses and potential accidents resulting from operation of the Fansteel facility.

Agencies and Persons Consulted

In preparation of the EA the Oklahoma Department of Environmental Quality, Hazards Management and Waste Services, Radiation Control Program, Water Quality Division was consulted.

Finding of no Significant Impact

The NRC has prepared an EA related to the renewal of Source Material License SMB-911. On the basis of this assessment, NRC has concluded that environmental impacts that would be

created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a finding of no significant impact is appropriate.

The EA, the license renewal application, and other documents related to this proposed action are available for public inspection and copying at the Commission's public document room in NRC's Region IV office, Harris Tower, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064, and in NRC's headquarters public document room, Gelman Building, 2120 L St., NW., Washington, DC 20037.

Opportunity for a Hearing

Based on the EA and accompanying safety evaluation, NRC is preparing to renew License SMB-911. The NRC hereby provides that this is a proceeding on an application for renewal of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Fansteel, Inc., Number Ten Tantalum Place, Muskogee, Oklahoma 74403-9296; Attention: John J. Hunter; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 18th day of July 1997.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 97-19489 Filed 7-23-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket 70-7001]

Notice of Amendment to Certificate of Compliance GDP-1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable

assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see (1) the application for

amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: October 31, 1996, revised February 14, and June 16, 1997.

Brief description of amendment: The amendment proposes a new Technical Safety Requirement for the autoclave manual isolation system in the feed facilities and makes the system a Q system under the quality assurance program.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

TSR 2.4.4.13 is a new TSR to cover the autoclave manual isolation system installed for the feed facilities. This system provides a remote method of simultaneously isolating all the autoclaves in the facility in the event of an observed release of uranium hexafluoride from piping outside the autoclave. This new system enhances the operators ability to isolate the feed autoclaves in the event of a leak. As such, these changes have no impact on plant effluents and will not result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes provide an enhanced ability to isolate the autoclaves in the event of a leak, thereby mitigating the consequences of a postulated accident. The changes will not increase exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any building construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed changes enhance the operator's ability to isolate the feed autoclaves in the event of a leak in the piping outside the autoclave and affect no other equipment functions. The autoclave manual isolation system is not involved in any precursor to an evaluated accident; therefore, the potential of occurrence of an evaluated event is unaffected. The consequences

of previously evaluated accidents are not increased.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The manual isolation system permits the simultaneous isolation of all the autoclaves in the affected facility. Autoclave isolation was previously performed individually. The changes affect the timing of autoclave isolation and create no new operating conditions or new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The autoclave manual isolation system enhances the ability to isolate the feed autoclave in the event of a leak. The proposed changes cause no reductions in the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

The proposed changes enhance the ability to isolate the feed autoclaves in the event of a leak. The changes do not affect any other equipment functions or administrative requirements. The cell trip function is not addressed in the safeguards and security programs. The effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: This amendment to Certificate of Compliance GDP-1 becomes effective 60 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP-1: Amendment will incorporate a new Technical Safety Requirement and safety analysis report changes.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this day of 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-19488 Filed 7-23-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket 70-7001]

Notice of Amendment to Certificate of Compliance GDP-1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of

the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: March 17, 1997, as revised June 19, 1997.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirements (TSRs) for the Nuclear Material Control and Accountability (NMC&A) scales used for uranium hexafluoride cylinder weight to allow the pre-heat cylinder weight to be determined on any operable accountability scale that has been calibrated to an adequate range and tolerance for the item being weighed. Similar changes are proposed for the Safety Analysis Report (SAR).

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed change involves revision of the NMC&A scale usage TSRs to permit weighing on any operable scale instead of specified scales. Because there is no effluent release associated with this change, the proposed changes will not affect the effluent.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes do not relate to controls used to minimize occupational radiation exposures, therefore, the changes will not increase exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed changes will allow any operable scale, instead of specified scales, to be used for weight verification. The proposed changes do no affect the potential for or radiological or chemical consequences from previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

Changing the TSR requirements for the NMC&A scales allows any operable scale to be used for weight verification prior to heating the uranium hexafluoride cylinder. The accident scenario of heating an overfilled cylinder has already been analyzed. The proposed changes would not create new operating conditions or new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The margin of safety defined for heating cylinders is the percent ullage or void space required to heat a cylinder. The ullage is not affected by this change. The proposed TSR will still require the use of operable scales, therefore, the ability to verify that the proper amount of ullage will be maintained during heating is not affected. The change to allow any operable scale instead of a specified scale is to provide operational flexibility in case a scale is inoperable. These changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP-1 becomes effective 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP-1: Amendment will revise Technical Safety Requirements for the NMC&A scale usage and the SAR discussion on scale usage.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 15th day of July 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-19490 Filed 7-23-97; 8:45 am]

BILLING CODE 7590-01-P

POSTAL SERVICE

Sunshine Act Meeting

AGENCY: Postal Service Board of Governors.

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: August 5, 1997.

STATUS: Open.

PREVIOUS ANNOUNCEMENT: 62 FR 38331, July 17, 1997.

CHANGE: Addition of the following item to the open meeting agenda:

4. Capital Investments.

c. Additional Funding Request for the Northwest Boston Processing and Distribution Center in Waltham, Massachusetts.

CONTACT PERSON FOR MORE INFORMATION: Kenneth C. Weaver, Assistant Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260-1000. Telephone (202) 268-4800.

Kenneth C. Weaver,

Assistant Secretary.

[FR Doc. 97-19639 Filed 7-22-97; 1:02 p.m.]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Public Service Pension Questionnaires; OMB 3220-0136 Public Law 95-216 amended the Social Security Act of 1977 by providing, in part, that spouse or survivor benefits may be reduced when the beneficiary is in receipt of a pension based on employment with a Federal, State, or local governmental unit.

Initially, the reduction was equal to the full amount of the government pension. Public Law 98-21, changed the reduction to two-thirds of the amount of the government pension. Sections 4(a)(1) and 4(f)(1) of the Railroad Retirement Act (RRA) provides that a spouse or survivor annuity should be equal in amount to what the annuitant would receive if entitled to a like benefit from the Social Security Administration. Therefore, the public service pension (PSP) reduction provision applies to RRA annuities.

Regulations pertaining to the collection of evidence relating to public service pensions or worker's compensation paid to spouse or survivor applicants or annuitants are found in 20 CFR 219.64c.

The RRB utilizes Form G-208, Public Service Pension Questionnaire, and Form G-212, Public Service Monitoring Questionnaire, to obtain information used to determine whether an annuity reduction is in order. Completion is voluntary. However, failure to complete the forms could result in the nonpayment of benefits. One response is requested of each respondent.

The RRB proposes to revise Form G-208 to add an item that requests the

effective date of a PSP recipient's next scheduled increase. The addition of language required by the Paperwork Reduction Act of 1995 and minor nonburden impacting editorial and reformatting changes are also proposed. The RRB also proposes a change to Form G-212 to add an item requesting the effective date of a PSP recipient's next scheduled cost-of-living increase. Minor nonburden impacting editorial and reformatting changes are also proposed. The completion time for the G-208 is estimated at 10 minutes. The completion time for the G-212 is estimated at 3 minutes. The RRB estimates that approximately 7,000 G-208's and 700 G-212's are completed annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97-19508 Filed 7-23-97; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38849; File No. SR-NASD-97-50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change by the NASD Clarifying the Operation of SOES

July 17, 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 14, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The NASD is submitting this rule filing to clarify the operation of The Nasdaq Stock Market's ("Nasdaq") Small Order Execution System ("SOES") during non-locked and crossed market situations. Specifically, the NASD proposes to amend NASD Rule 4730(b)(1) to more explicitly state the process by which unpreferred market orders are executed in SOES. In particular, Rule 4730(b)(1) is being amended to clarify that once SOES executes an unpreferred market or marketable limit order against a SOES market maker, that market maker is not required to execute another unpreferred SOES order at the same bid or offer in the same security until seventeen seconds has elapsed, absent a quotation update by the market maker within such seventeen second period. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

NASD Rule 4730. Participant Obligations in SOES

* * * * *

(b) Market Makers

(1) A SOES Market Maker shall commence participation in SOES by initially contacting the SOES Operation Center to obtain authorization for the trading of a particular SOES security and identifying those terminals on which the SOES information is to be displayed and thereafter by an appropriate keyboard entry which obligates the firm, so long as it remains a Market Maker in SOES:

(A) for any security for which it is a SOES Market Maker, to execute individual orders in sizes equal to or smaller than the maximum order size; and

(B) for any NNM security for which it is a Market Maker, to execute individual orders equal in the aggregate to the minimum exposure limit.

After SOES has executed an order against a Market Maker, that Market Maker[s] shall not be [have a period of time following their receipt of an execution report in which to update their quotation in the security in question before being] required to execute another unpreferred order at the same bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system, provided the Market Maker has not updated its quotation (bid, offer, or size) within such time period, in which case the Market Maker will become immediately eligible to receive another execution of an

unpreferred order. This period of time shall initially be established as 17 [15] seconds, but may be modified upon *Commission approval and appropriate notification to SOES participants.* All entries in SOES shall be made in accordance with the requirements set forth in the SOES User Guide.

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

The NASD is submitting this proposal to clarify the process by which SOES executes unpreferred market and marketable limit orders. Presently, NASD Rule 4730(b)(1) provides that:

Market Makers shall have a period of time following their receipt of an execution report in which to update their quotation in the security in question before being required to execute another unpreferred order at the same bid or offer in the same security. This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to SOES participants. . . .

This rule language was added to the NASD's rules in October 1991 so that SOES market makers would be afforded a brief fifteen-second opportunity to update their quotations in response to executions received through SOES ("15-Second SOES Execution Response Period"). As the current language of Rule 4730(b) reflects, the "15-Second SOES Execution Response Period" commences when a market maker has received notification of a SOES execution through the system. Indeed, the description of the "15-Second SOES Execution Response Period" in the SEC's order approving the provision provides that "[f]ollowing receipt of an execution report of an unpreferred purchase or sale through SOES, a market maker will have a period of time (15 seconds) to update its quote prior to executing any subsequent transaction on the same side of the market at the same

price." (footnote omitted).¹ Because SOES does not have the capability to determine the exact time when a market maker receives a SOES execution report, at the time this rule was implemented Nasdaq estimated that it took up to five seconds for SOES to execute an order against a market maker and for the market maker to receive a report of the execution (the "SOES Execution Report Communication Period"). As a result, SOES was programmed to uniformly add a five-second period to the "15-Second SOES Execution Response Period," with the effect that the system executes unpreferred market orders against a market maker in twenty-second intervals, absent a quotation update by the market maker.

Recently, Nasdaq undertook to estimate the time its takes for a market maker to receive a SOES execution report. This analysis indicates that on average, the SOES Execution Report Communication Period is between two and three seconds, although actual time can and does vary depending on activity and communications traffic during different periods of the day. It was determined to be appropriate to assign a two-second period to the SOES Execution Report Communications Period for purposes of the rule.

With this rule filing, therefore, the NASD proposes to explicitly incorporate this two-second period into Rule 4730. Specifically, the NASD proposes to amend Rule 4730 to provide that a market maker shall not be required to execute another unpreferred SOES order at the same bid or offer in the same security until seventeen seconds have elapsed from the time of execution. The proposed rule change is designed to retain the ability of a market maker to respond to SOES executions while recognizing that, under normal circumstances, a minimal period of time is necessary for reports of those executions to be received by the market maker. The proposed amendments to Rule 4730(b) also clarify: (1) That a market maker becomes immediately eligible to receive another execution through SOES if it updates its quote (its bid, offer, or size) during the seventeen second period;² and (2) that the

seventeen second period arises regardless of whether the market maker executes an unpreferred market order or an unpreferred marketable limit order. By amending the rule in this fashion, the rule will eliminate any ambiguities among market participants concerning the manner in which unpreferred orders are executed in SOES. These amendments will also address a concern about the rule noted by the SEC in its Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market ("SEC Report").³

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act and SEC Rule 11Ac1-1. 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. Specifically, by clarifying the process by which unpreferred SOES orders are executed in the NASD's rules, the NASD believes the proposal will promote fair and orderly markets and the protection of investors.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

³The SEC stated that "[t]he NASD should have set forth in its filings with the Commission seeking approval for the [SOES execution] delay that the time between executions had been set at twenty seconds, but did not do so." See Appendix to the SEC Report, at 76.

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-97-50 and should be submitted by August 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-19446 Filed 7-23-97; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Tariff-Rate Quota for Imports of Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that USTR has determined that Uruguay, pursuant to its request, is a participating country for purposes of the export certification program for imports of beef under the tariff-rate quota.

DATES: The action is effective August 1, 1997.

⁴ 17 CFR 200.30-3(a)(12).

¹ Securities Exchange Act Release No. 29810 (October 10, 1991), 56 FR 52098, 52099 (order approving file SR-NASD-91-18).

² The proposed amendments to Rule 4730(b) do not change in any way the current functionality of SOES whereby preferred orders are continuously executed against a market maker without any delay between executions. In addition, as is presently the case during locked and crossed markets, SOES will execute orders (both preferred and unpreferred) against those market makers that are locked or crossed in five second intervals. See NASD Rule 4730(b)(4).

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Policy Advisor for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508; telephone: (202) 395-9615.

SUPPLEMENTARY INFORMATION: The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the Marrakesh Agreement Establishing the World Trade Organization. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of the administration of that tariff-rate quota, USTR provided, in 15 CFR Part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines are participating countries for purposes of 15 CFR Part 2012.

On June 2, 1997, USTR received a request and the necessary supporting information from the government of Uruguay to be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective August 1, 1997, Uruguay is a participating country for purposes of 15 CFR Part 2012. As a result, effective on or after August 1, 1997, imports of beef from Uruguay will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate. Imports exported prior to August 1, 1997, including exports currently warehoused, will not require a certificate. In order for the export certificate to be valid, it has to be used in the calendar year for which it is in effect.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97-19555 Filed 7-23-97; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96-044]

International, Private-Sector Tug-of-Opportunity System, Notice of Availability of a Ship Drift Analysis for the Northwest Olympic Peninsula and the Strait of Juan de Fuca

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard makes available the Ship Drift Analysis for the

Northwest Olympic Peninsula and the Strait of Juan de Fuca, prepared by the National Oceanic and Atmospheric Administration (NOAA). The Coast Guard is seeking comments from the public on how to apply the NOAA analysis to the marine safety criteria set forth in a Report to Congress on International, Private-Sector Tug-of-Opportunity System for the Waters of the Olympic Coast National Marine Sanctuary and the Strait of Juan de Fuca. Requests for written materials may be directed to CDR William Carey as listed under the title **FOR FURTHER INFORMATION CONTACT**.

DATES: Comments must be received by August 14, 1997.

FOR FURTHER INFORMATION CONTACT: CDR William Carey, Commander, Thirteenth U.S. Coast Guard District (mep), telephone (206) 220-7221, fax (206) 220-7225. The telephone number is equipped to record messages on a 24-hour basis. Submit written comments to LT William Pittman, Commandant (G-MOR), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, telephone (202) 267-0426, fax (202) 267-4085.

SUPPLEMENTARY INFORMATION: The Alaska Power Administration Asset Sale and Termination Act (P.L. 104-58) was signed into law on November 28, 1995. A Presidential directive and subsequent DOT Action Plan required the Coast Guard to assess and provide a Report to Congress, in accordance with the Act, on the most cost effective means of implementing a private-sector initiated, international, tug-of-opportunity system (ITOS) for responding to vessels in distress operating off of the Olympic Coast National Marine Sanctuary (OCNMS) and within the Strait of Juan de Fuca. The Report to Congress was signed on January 31, 1997. An addendum is being prepared to the Report to Congress to address issues unresolved as of January and to report on steps taken toward implementation of ITOS. The Coast Guard conducted two public meetings to receive views; one meeting, held October 17, 1996, was on the documentation and marine safety criteria developed by the Coast Guard to assess an ITOS plan; the other meeting, held November 26, 1996, was on the ITOS plan provided by a marine industry coalition. Comments provided by the public during these meetings suggested a need to study more closely the weather conditions affecting ship drift in the area of interest before finalizing the marine safety criteria. As a result, the Department of Transportation requested NOAA study

effects of weather conditions upon ship drift. The NOAA study is now complete.

This notice requests the views of the public on how to apply this new information to the zone boundaries and/or the response time criteria identified below. The specific marine safety criteria under consideration are coverage areas (zone boundaries) and response times. In the Report to Congress, the area of interest was divided into seven zones; these zones were defined as follows: Area 1: An area east of a line between Port Angeles Light to Race Rocks Light; Area 2: An area east of a line between Slip Point Light to San Simon Point and West of the western boundary of Area 1; Area 3: An area defined in the West by a 10 mile Arc centered on Buoy "J" (modified in response to comments from Washington State and the Markah Indian Tribe) defined in the east by the western boundary of Area 2; Area 4: An area bounded on the east by the boundary of Area 3 extending west to 50 miles offshore and on the south by the latitude of Buoy "J" (48° 30'N); Area 5: An area bounded by 48° 30' and 48° 00'N and the western boundary of the OCNMS; Area 6: An area bounded by 48° 00'N and 47° 30'N and the western boundary of the OCNMS; and Area 7: An area bounded by 47° 30'N, the southern boundary of the OCNMS, and the western boundary of the OCNMS. The response times for the coverage areas are as follows: Area 1 is 2 hours; Areas 2 and 3 is 2.5 hours; Area 4 is 6 hours; and Areas 5, 6, 7 is 12 hours.

The public views provided as a result of this notice will be used to prepare the Addendum to the previously mentioned Report to Congress. Once complete, public access to the report will be identified through a notice of availability in the **Federal Register**. Note that there have been 3 prior **Federal Register** notices, 61 FR 15154, 61 FR 48202, and 61 FR 56258, requesting comments. Because these matters are related, feedback on comments related to documentation requirements, marine safety criteria, industry ITOS plan, and ship drift will be joined and provided in a future **Federal Register** notice.

Dated: July 17, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97-19450 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. 92-64; Notice 12]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on the proposed collections of information, including extensions and reinstatements of previously approved collections.

DATES: Comments must be received on or before September 22, 1997.

ADDRESSES. Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to the Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that one original plus two copies of the comments be provided. The Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Complete copies of each NHTSA request for collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street SW, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366-2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) The accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of information to be collected; and

(iv) 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 technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collections of information:

Title—American Automobile Labeling Act.

Type of Request—New collection.
OMB Clearance Number—New collection.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from approval date.

Summary of the Collection of Information—NHTSA will conduct three surveys to collect information from potential and actual purchasers of new passenger cars, light trucks, and multipurpose passenger vehicles; new vehicle dealers; and domestic and foreign-based manufacturers of these vehicles.

Description of the Need for the Information and Proposed Use of the Information—Under Executive Order 12866, "Regulatory Planning and Review" NHTSA is required to conduct periodic evaluations to assess the effectiveness of its existing regulations and programs. Since this regulation has been in effect for at least a full year, NHTSA intends to collect data through the administration of three surveys, to evaluate the effectiveness of the American Automobile Labeling Act.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information—NHTSA estimates that at least 6,250 telephone calls will be made to consumers, with a target for successfully completed responses of 800 persons. NHTSA estimates that 300 vehicle dealers will be contacted to obtain 200 completed responses. NHTSA anticipates that about 23 vehicle manufacturers will be affected by the reporting requirements. NHTSA does not believe any of these

manufacturers is a small business (i.e., one that employs less than 500 persons) since each manufacturer employs more than 500 persons. Each of the surveys is a one-time collection.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that the total reporting burden for consumers will amount to approximately 224 hours. The total information collection burden on dealers will amount to approximately 1,650 hours, and the total information collection burden on all manufacturers will amount to approximately 230 hours. The total reporting burden for this project is estimated at 2,104 hours; the total recordkeeping costs for the one-time collection of information is estimated at \$53,705.00

Issued on: July 18, 1997.

William H. Walsh,

Associate Administrator for Plans and Policy.
[FR Doc. 97-19518 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****Announcing the Fourth Meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee**

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fourth meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSAC). MVSAC established this Subcommittee at the April 1992 meeting to examine research questions regarding crashworthiness of vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for August 20, 1997, from 10:00 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in room 8236 of the U.S. Department of Transportation building, which is located at 400 Seventh Street, S.W., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. MVSAC will provide information, advice, and recommendations to NHTSA on matters

relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSAC Charter.

At the first meeting of the Crashworthiness Subcommittee on November 16, 1992, a Biomechanics Working Group and a Vehicle Aggressivity and Compatibility Working Group were established with the goal of presenting technical information and data to the Crashworthiness Subcommittee.

This meeting of the Crashworthiness Subcommittee will include status reports by the Vehicle Aggressivity and Compatibility Working Group and the recently formed Advanced Air Bag Technology Working Group.

The meeting is open to the public, and participation by the public will be moderated by the Subcommittee Chairperson.

A public reference file (Number 88-01—Crashworthiness Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, S.W., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Office of Research and Development, 400 Seventh Street, S.W., Room 6206, Washington, DC 20590, telephone: (202) 366-4862, telefax: (202) 366-5930.

Issued on: July 18, 1997.

Joseph N. Kianthra,
*Chairperson, Crashworthiness Subcommittee,
Motor Vehicle Safety Research Advisory
Committee.*

[FR Doc. 97-19447 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97-65]

Extension of Inspectorate America Corporations Customs Gauger Approval & Laboratory Accreditation to the New Site Located in Port Everglades, Florida

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Inspectorate America Corp.'s Customs gauger approval and laboratory accreditations to include its Port Everglades, FL facility.

SUMMARY: Inspectorate America Corp., of Houston, TX, a Customs approved gauger and accredited laboratory under Sections 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditations to include the Port Everglades, FL site. Specifically, this site has been given Customs approval under Part 151.13(a)(1) of the Customs Regulations to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and animal and vegetable oils in all Customs districts; and

accreditation to perform the following tests as listed under Part 151.13(a)(2): API gravity, distillation characteristics, vapor pressure, sediment, viscosity and percent by weight sulphur.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Inspectorate America Corp., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and laboratory accreditation to its Port Everglades, FL facility. Review of the qualifications of the site shows that the extension is warranted and, accordingly, has been granted.

Location

Inspectorate America Corp.'s site is located at 801 SE. 28th Street, Port Everglades, FL 33316.

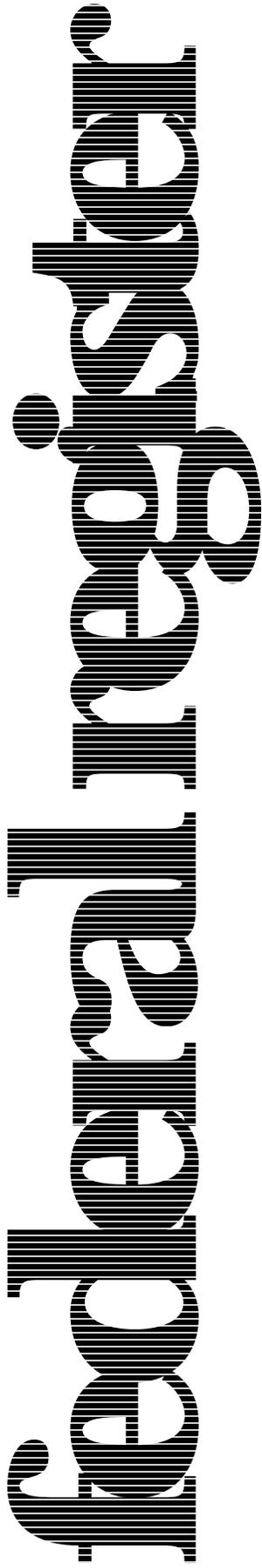
EFFECTIVE DATE: June 3, 1997.

FOR FURTHER INFORMATION CONTACT: Marcelino Borges, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 at (202) 927-1060.

Dated: July 7, 1997.

George D. Heavey,
Director, Laboratories and Scientific Services.
[FR Doc. 97-19513 Filed 7-23-97; 8:45 am]

BILLING CODE 4820-02-M



Thursday
July 24, 1997

Part II

**Department of
Health and Human
Services**

Food and Drug Administration

**21 CFR Part 314, et al.
Changes to an Approved Application;
Guidance for Industry: Changes to an
Approved Application For Specified
Biotechnology and Specified Synthetic
Biological Products and Biological
Products; Final Rule and Notices**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314, 600, 601, 610, and 640

[Docket No. 95N-0329]

RIN 0910-AA57

Changes to an Approved Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations for reporting changes to an approved application in order to reduce unnecessary reporting burdens on applicants holding licenses approved by the Center for Biologics Evaluation and Research (CBER) under the Public Health Service Act (the PHS Act) to manufacture biological products. In addition, FDA is amending the corresponding drug regulations for submitting supplements and reporting changes to an application approved under the Federal Food, Drug, and Cosmetic Act (the act) for specified biotechnology products reviewed in the Center for Drug Evaluation and Research (CDER) to harmonize the drugs and biologics regulations. This final rule is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives.

DATES: Effective Date: The regulation is effective October 7, 1997.

Compliance Date: Submit initial annual reports required by §§ 314.70(g)(3) and 601.12(d) and (f)(3) within 60 days of the first anniversary date of the approval of the application of the product occurring on or after January 20, 1998.

FOR FURTHER INFORMATION CONTACT:

Steven F. Falter, Center for Biologics Evaluation and Research (HFM-630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-594-3074,

or

Yuan Yuan Chiu, Center for Drug Evaluation and Research (HFD-800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0260.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 29, 1996 (61 FR 2739), FDA proposed to amend the biologics regulations in

§ 601.12 (21 CFR 601.12) for reporting to FDA changes to an approved application in order to reduce unnecessary reporting burdens on applicants holding licenses approved by CBER under the PHS Act to manufacture biological products. Similarly, FDA also proposed to amend the corresponding regulations applicable to drugs in § 314.70 (21 CFR 314.70) for reporting changes to an approved application for certain biotechnology products (identified in the proposed rule as "well-characterized biotechnology products") to reduce unnecessary reporting burdens and to harmonize the regulations applicable to biotechnology products. FDA issued the proposed rule as part of its response to several mandates to reduce the burdens associated with government regulation. These mandates include, the President's memorandum of March 4, 1995, announcing the "Regulatory Reinvention Initiative;" the President's memorandum of April 21, 1995, "Regulatory Reform—Waiver of Penalties and Reduction of Reports;" the April 1995 publication, "Reinventing Drug and Medical Device Regulations;" and the November 1995, Presidential National Performance Review report, "Reinventing the Regulation of Drugs Made From Biotechnology." Each included elements intended to reduce regulatory burdens while assuring the continued safety and effectiveness of regulated products.

This final rule is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiative to harmonize regulations administered by CDER and CBER in FDA, to reduce unnecessary burdens, and to improve the consistency in the processes for complying with FDA's regulations without diminishing public health protection.

II. Proposed Rule

In the proposed rule of January 29, 1996, FDA proposed that for reporting purposes changes to an approved application be divided into three categories. In § 601.12(b), FDA proposed for a change that has a substantial potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product, that a supplement to the approved application be submitted and that the product manufactured after the change not be distributed until the supplement is approved. In § 601.12(c), FDA proposed for a change that has a moderate potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product, that FDA

be notified in writing of a change not less than 30 days before distribution of the product made using the change. Proposed § 601.12(c)(2) provided that if any specified information in the notification is missing or if the type of change requires submission of a supplement and approval by FDA before implementation, the product may not be distributed until compliance with the requirements is achieved. In proposed § 601.12(d), changes that have a minimal potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product would be reported in an annual report, submitted each year within 60 days of the anniversary date of the approval of the application. The information that would be included in the annual report was specified in proposed § 601.12(d)(1). In § 601.12(e), FDA proposed regulations similar to those discussed above applicable to changes in labeling. For clarity, FDA proposed in 21 CFR 600.3 to add definitions for "amendment" and "supplement" as the terms apply to license applications for biological products.

For consistency, FDA also proposed to amend the corresponding regulations applicable to drugs in § 314.70 for submitting supplements and reporting changes to an application approved under the act for certain biotechnology products reviewed in CDER (identified in the proposed rule as "well-characterized biotechnology products").

In the same issue of the **Federal Register** of January 29, 1996, (61 FR 2748 and 2749), FDA made available and invited public comment on two draft guidance documents entitled, "Changes to an Approved Application for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products" and "Changes to an Approved Application." The draft guidance documents were intended to assist applicants in determining how they should report changes to an approved application under the revised regulations. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of final guidance documents, revised from those proposed as a result of public comment, which are intended to aid applicants in complying with the requirements of this final rule.

In the **Federal Register** of March 28, 1996 (61 FR 13793), FDA announced a public meeting, held on April 19, 1996, to discuss and gather information and views on the proposed rule and draft guidance documents. A transcript of the public meeting is on file in the public docket identified in the heading of this

document at Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

III. Highlights and Summary of Changes in the Final Rule

Under the proposed rule, an applicant would be required to report a change by one of three mechanisms, depending on the potential for the change to have an adverse effect on the safety, purity, potency, or effectiveness of the product. Similarly, the final rule will require reporting of changes under one of three mechanisms, depending on the potential for the change to have an adverse effect on the "identity, strength, quality, purity, or potency of the product, as they may relate to the safety or effectiveness of the product" (hereinafter referred to in the document as "the safety or effectiveness of the product").

The scope of applicability of the changes to § 314.70 is being revised to identify the specific products, i.e., recombinant deoxyribonucleic acid (DNA)-derived protein/polypeptide products and complexes or conjugates of drugs with monoclonal antibodies regulated under the act, to which new § 314.70(g) applies. Monoclonal antibodies for in vivo use complexed or conjugated with radiopharmaceuticals or toxins would be covered by § 601.12 of the final rule.

Some changes in each category are identified in the final rule. Several of these changes differ from those changes identified in the proposed rule. Some of these changes were previously discussed in the draft guidance documents as FDA's interpretation of the types of changes FDA believed would fall into each category. Based on comments received, they are now included in the final rule to provide added clarity as to the types of changes which have a substantial, moderate, or minimal potential to have an adverse effect on the safety or effectiveness of a product.

The final rule provides for the use of a protocol, sometimes called a "comparability protocol," which would describe the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of changes on the safety or effectiveness of the product. Upon approval of the protocol, FDA may determine that certain changes evaluated in accordance with the protocol may be reported by a less burdensome means; for example, a change generally requiring preapproval by FDA could be made and the product distributed 30 days after receipt by FDA

of the supplement reporting the change. For a change normally requiring a 30-day wait, use of the approved protocol could justify distribution at the time of receipt of the supplement by FDA. An approved comparability protocol may also be used, in some cases, to reduce the reporting category from requiring a 30-day supplement submission to an annual report submission.

For those changes that have a moderate potential to have an adverse effect on the safety or effectiveness of the product, the final rule will require the submission of a supplement subject to FDA approval, and the product made using the change may be distributed not less than 30 days after receipt of the supplement by FDA; or, in some cases, the product made using the change may be distributed immediately upon receipt of the supplement by FDA.

Similar to the proposed rule, changes that have a minimal potential to have an adverse effect on the safety or effectiveness of the product will be reported in an annual report, submitted within 60 days of the first year of date of approval of the application. The final rule also allows an applicant holding a license under section 351 of the PHS Act to request FDA approval to submit an annual report on a date other than the first year so that annual reports for multiple products may be combined in a single annual report submission.

The requirements for reporting changes to the labeling for biological products are basically unchanged from the proposed rule. One clarification is the form to be used for submission of advertisements and promotional labeling for biological products. Form FDA-2253 (Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use), the form specified in § 314.81(b)(3) (21 CFR 314.81(b)(3)), is currently under revision by the agency. When final, it will be used for both drug and biological products for submission of advertisements and promotional labeling. The final rule now states that "Form FDA-2567 (Transmittal of Labels and Circulars) or an equivalent form shall be used." In the future, FDA intends that a revised Form FDA-2253 will be used instead of Form FDA-2567. A future **Federal Register** notice will announce the availability of the revised Form FDA-2253.

The final rule includes a conforming amendment to § 610.9 (21 CFR 610.9) for biological products subject to licensing, so that changes to methods and processes equivalent to those specified in the regulations may be submitted in accordance with § 601.12 in the final rule. Similarly, FDA is

revising § 640.120 (21 CFR 640.120) so that an exception or alternative to the regulations applicable to blood, blood components, or blood products may be submitted, for licensed products, in accordance with § 601.12.

Other minor changes to improve the clarity and consistency of the regulations are also included throughout the final rule.

IV. Responses to Comments

FDA provided 90 days for the submission of written comments on the proposed rule. FDA also invited the submission of written comments at the public meeting of April 19, 1996. To ensure that there was adequate time for the submission of written comments resulting from the public meeting, as announced in the notice of the public meeting, FDA extended the comment period an additional 8 days, providing 98 days for public comment.

The transcript of the public meeting, written comments to the proposed rule, and comments submitted at or after the public meeting are on file in the Dockets Management Branch (address above).

FDA received eleven letters of comment in response to the proposed rule, including one letter filed in response to one of the guidance documents but which includes comments pertaining to the proposed rule. Comments received and FDA's responses to the comments are discussed below.

1. Two comments on proposed § 314.70(g) recommended that the term "well-characterized biotechnology product" be broadened to include additional products, consistent with the definition proposed by the Pharmaceutical Research and Manufacturers of America.

FDA has determined that it is more appropriate to clearly specify products covered by the final rule than to use a general term such as "well-characterized biotechnology products." As proposed, § 314.70(g) would have applied only to those "well-characterized biotechnology products" which are regulated as new drugs, rather than as biologics. FDA has determined that defining such products is difficult and no longer uses the term in this or other regulations (see the final rule, Elimination of Establishment License Application for Specified Biotechnology and Specified Synthetic Biological Products (61 FR 24227, May 14, 1996), concerning appropriate terminology for these products). To clarify the regulation, FDA is amending § 314.70(g) in the final rule to identify the specific products to which paragraph (g) applies; i.e., recombinant DNA-derived protein/

polypeptide products or complexes and conjugates of drugs with monoclonal antibodies (where the primary mode of action is due to the drug). For all other drug products, including synthetic peptides and antisense nucleotides, the applicant will continue to report changes as provided in § 314.70(a) through (f). For monoclonal antibodies complexed or conjugated with radiopharmaceuticals or toxins, changes to approved applications will be reported under § 601.12.

2. Three comments requested additional clarification of what constitutes a "substantial," "moderate," and "minimal" potential to have an adverse effect on the product. The comments stated that further definition of the risks that are of concern to FDA are necessary to understand the regulation and that such clarification was preferable to providing exhaustive lists of examples of changes in agency guidance.

The regulations in the final rule apply to many types of changes for a broad spectrum of products, including many biotechnology products, vaccines, blood and blood components, and other biological products. The regulations will apply to products that are currently experimental or in the conceptual stages of development, which may have special concerns that FDA cannot, at this time, anticipate. The regulations are written to accommodate the many types of changes for such a broad range of products.

In addition, there is a need to preserve flexibility in the regulations to ensure that the least burdensome means for reporting changes are made available. FDA believes that this flexibility will ensure the continued improvement of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have an adverse effect on the safety or effectiveness of the product. Conversely, a change now considered, for example, to have a moderate potential to have an adverse effect on the safety or effectiveness of the product may, based on information not available at this time, be later determined by the agency to have a substantial potential to have an adverse effect on a product.

FDA agrees there is a need to clarify the regulations to help identify those changes which have a substantial, moderate, or minimal potential to have an adverse effect on the safety or effectiveness of the product. In this

regard, FDA has included examples of specific changes in the final rule in order to further clarify the types of changes that fall into each category and to provide further predictability about the application of the rule.

Many factors should be considered in determining whether a change has a substantial, moderate, or minimal potential to have an adverse effect on the safety or effectiveness of the product. For example, the level of knowledge about the product and its active components may affect the ability to assess the effect of a change. The type of change being made will also contribute to the risk of the change having an adverse effect. Some manufacturing changes have a greater potential to cause unwanted or unexpected changes to the product which may be difficult to assess by merely testing to specifications. The type of product is also a factor to consider in determining the potential risk of an adverse effect on the product. Some products can be adversely affected by small changes which may cause larger effects even though the changes may seem to be low risk. For example, a change in passage number for a live virus vaccine could affect the safety of the vaccine and this type of change may be difficult to assess.

Therefore, defining "substantial," "moderate," and "minimal" in the regulations with such specificity that they exhaustively describe all of the many individual changes that may occur is not feasible. However, as FDA gains experience in the use of this rule, it will consider whether to propose additional revisions to further clarify how to determine the appropriate submission for a change to an approved application.

At this time, FDA is clarifying the final regulations in several ways while providing adequate flexibility. The revisions are as follows:

a. *Clarification of wording.* FDA is amending the final rule by specifying a change in quality controls as a type of change within the scope of reporting provisions of the final rule. Similarly, for purposes of clarity and consistency, FDA is including in § 601.12(a), (b)(1), (c)(1), and (d)(1) a change in responsible personnel as subject to the requirements of the final rule. "Responsible personnel" was inadvertently included in only some, but not all, of the appropriate parts of the proposed rule.

FDA is further amending the final rule to specify that the mechanism for reporting a change is based on the degree of potential of the change "to have an adverse effect on the identity, strength, quality, purity, or potency of

the product as they may relate to the safety or effectiveness of the product." "Identity, strength, quality, purity, and potency" are all elements that are assessed in determining the safety or effectiveness of the product. In addition, FDA is adding the term "major changes" to the headings of §§ 314.70(g)(1) and 601.12(b), and "minor changes" to the headings of §§ 314.70(g)(3) and 601.12(d), in order to further clarify the types of changes which would fall into each category.

b. *Inclusion of examples of changes falling under each reporting category.* In proposed §§ 314.70(g)(1)(i)(A), (g)(1)(i)(B), and (g)(1)(i)(C) and 601.12(b)(1)(i), (b)(1)(ii), and (b)(1)(iii), FDA specifically identified changes that would be among those subject to supplement submission and approval prior to distribution of the product made using the change. FDA has reevaluated the proposed regulations and has determined that, for purposes of clarification, more types of changes should be specifically identified in the regulations as being subject to supplement submission and approval prior to distribution of the product made using the change. Accordingly, the final rule provides in §§ 314.70(g)(1)(ii)(A) through (g)(1)(ii)(F) and 601.12(b)(2)(i) through (b)(2)(vi) more types of changes that FDA has determined are subject to submission of a supplement and approval by FDA prior to distribution of the product made using the change.

Similarly, FDA is including examples of changes that have a moderate potential or a minimal potential to have an adverse effect on the safety or effectiveness of a product in §§ 314.70(g)(2)(ii) and 601.12(c)(2), and §§ 314.70(g)(3)(ii) and 601.12(d)(2), respectively. These lists are not intended to be all inclusive but are examples of the types of changes that fall into each category.

3. One comment recommended that proposed § 314.70(g) not be added to part 314 (21 CFR part 314). Instead, the comment suggested that changes related to any well-characterized biotechnology product, whether regulated as a drug or as a biologic, should be reported in accordance with existing § 314.70(a) through (f).

FDA disagrees in part with the comment. FDA agrees that biotechnology products should be regulated consistently but believes the regulations in the final rule are necessary to ensure the continued safety and effectiveness of recombinant DNA-derived protein/polypeptide products and complexes or conjugates of drugs with monoclonal antibodies. Products

manufactured using biotechnology can present somewhat different scientific issues than products manufactured using more traditional techniques. In new §§ 314.70(g) and 601.12, the agency is promulgating requirements appropriate for this category of product, whether regulated as a drug or biologic.

4. One comment on proposed §§ 314.70(g)(3) and 601.12(d) recommended that the requirements be amended to be consistent with current § 314.70(d)(1) so that changes made by an applicant to comply with an official compendium would be among those for which only notification in an annual report would be necessary.

FDA agrees with the comment and is including this change in §§ 314.70(g)(3)(ii) and 601.12(d)(2) of the final rule as one that may be reported in the annual report.

5. One comment on proposed § 601.12 suggested that the term "effectiveness" should not be used in reference to blood and plasma establishments. The comment stated that the effectiveness of a blood component can be greatly affected by circumstances of its use, which is entirely out of the control of the manufacturer and that Source Plasma, being a source material for the manufacture of other products, has no "effectiveness" in and of itself.

FDA disagrees with the comment. There are many examples of types of changes in manufacturing a blood or blood component product which may have an adverse effect on the effectiveness of the product. For example, any change that may affect the viability of Red Blood Cells, such as a change in dating period, anticoagulant, or processing methods, may directly affect the effectiveness of the product and the impact of the change should be evaluated accordingly. The comment is correct that Source Plasma is only used in the manufacture of other products and the "effectiveness" of Source Plasma is not by itself a consideration. However, inclusion of the "effectiveness" in the regulations has no effect upon the burdens associated with the regulations for Source Plasma or other intermediate products where effectiveness of the product is not directly a factor. FDA believes it is unnecessary to clarify further the regulations in this respect.

6. One comment disagreed with the examples of changes given in proposed § 601.12(b)(1), which would require submission of a supplement and approval by FDA before distribution of the product made using the change. The comment stated that most of the examples of changes should be reported

as notifications to FDA rather than requiring preapproval.

FDA disagrees with the comment. The types of changes identified in § 601.12(b)(1) of the proposed rule and those in the final rule are based on FDA's experience of reviewing supplements and are those for which FDA believes there is a substantial potential to have an adverse effect on the safety or effectiveness of the product. Listing examples of the types of changes with such potential provides useful information to applicants for assessing the appropriate category of reporting.

However, FDA also recognizes there may be instances when the agency may determine that a reduced reporting category for a specific manufacturing change is justified for a type of change that is ordinarily subject to submission of a supplement and approval by FDA prior to distribution of the product made using the change.

If the agency can be assured that when a manufacturing change is implemented appropriate procedures have been followed by the applicant to evaluate the effect of the change on the safety or effectiveness of the product, FDA believes that in certain cases the potential for an adverse effect may be lessened.

Generally, when considering a change in the manufacture of a product, the manufacturer will prepare a protocol, often called a "comparability protocol," identifying and describing the tests to be performed in evaluating the change and its effect on the product, and defining the criteria against which the impact of the change will be evaluated. By providing an opportunity for FDA to review and approve the comparability protocol before it is used by the applicant to evaluate a change, FDA can have greater assurance that the change is being properly evaluated and, therefore, that there is less potential for the change to have an adverse effect on the safety or effectiveness of the product.

Accordingly, FDA is adding §§ 314.70(g)(4) and 601.12(e) in the final rule to provide that an applicant may submit to FDA as a supplement a protocol describing the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the safety or effectiveness of the product. Upon approval of the protocol, FDA may determine that the use of the approved protocol for the particular change justifies the use of a reduced reporting category for that change because the use

of the protocol reduces the potential risk of adverse effect.

The guidance documents being made available with this final rule provide examples of how, consistent with FDA's current interpretation of the rule, a comparability protocol approved by FDA may be used to justify a reduction in the reporting category. For example, use of an approved protocol for a particular change may result in a determination by FDA that a change usually subject to supplement submission and approval by FDA prior to distribution of the product made using the change may be submitted as a change subject to supplement submission at least 30 days prior to distribution of the product made using the change. Similarly, FDA is including in §§ 314.70(g)(2)(v) and 601.12(c)(5) in the final rule that use of a previously approved protocol is one means by which FDA may determine that a product made using a specified change may be distributed immediately upon receipt of the supplement by FDA (see also, FDA's response to comment 10 of this document for additional discussion of the means for permitting the immediate distribution of a product made using a change).

However, use of a comparability protocol approved by FDA may not justify a reduction in the reporting category for every type of change. Some steps in manufacturing a biological product are so critical to the safety and effectiveness of the product that a change in that manufacturing step would always be subject to the submission of a supplement to FDA and approval by FDA prior to distribution of the product made using the change.

7. Two comments related to proposed § 601.12(c), which would provide for notification to FDA of certain changes not less than 30 days before distribution of the product made using the change. The comments recommended that § 601.12(c) be deleted and that there be only two tiers of changes: Those requiring submission of a supplement and preapproval by FDA, and those which may be reported in an annual report. One of the comments recommended that, when other safety issues have been addressed, changes which result in a product meeting currently approved release criteria should be reported in an annual report. One of the comments noted that, in effect, the submission of a notification was equivalent in reporting burden to the submission of a supplement.

FDA disagrees with the comment that there should be only two categories of changes but recognizes that the regulations should be revised to allow

more types of changes to be implemented in 30 days. An important objective of this rulemaking is to provide for the prompt implementation of changes while allowing FDA to ensure that the changes do not have an adverse effect on the safety or effectiveness of the product. As proposed, §§ 314.70(g)(2) and 601.12(c) would have provided for the distribution of a product made using certain changes 30 days after notification to FDA but they did not provide for the full evaluation and approval by FDA of information gathered by the applicant in validating the change. As a consequence, under the proposed rule, FDA would have been unable to determine, because of the absence of data, that many changes could be considered to have a moderate, rather than a substantial, potential to have an adverse effect on the safety or effectiveness of the product.

Accordingly, FDA is revising proposed §§ 314.70(g)(2) and 601.12(c) to require, for changes which have a moderate potential to have an adverse effect on the safety or effectiveness of the product, the submission of a supplement, rather than a notification, 30 days before distribution of the product made using the change. FDA is taking this initiative so that significantly more types of changes may be moved from the prior approval category, thereby allowing distribution of the product at or near the time of submission.

In this regard, in preparing this final rule, FDA reviewed those changes that were identified in the proposed rule (and discussed in the draft guidance documents) as subject to supplement submission and FDA approval prior to distribution of the product made using the change. The agency determined that for many of these changes, agency review of the data is necessary to assess any potential long-term effect on the continued safety or effectiveness of the product, but that it is unnecessary to require that FDA approval of the supplement be obtained before the product made using the change is initially distributed. In addition, as discussed previously in this document, FDA has decided to permit the use of a "comparability protocol" for certain changes in lieu of requiring supplement submission and approval prior to distribution of the particular product made using the change. Thus, as described in the guidance documents being made available with this final rule, a change that is usually considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, in

certain circumstances, be implemented and the product distributed not less than 30 days after FDA's receipt of the supplement or, in some cases, immediately upon submission of the supplement notifying the agency of the change, provided the change has been evaluated by the applicant in accordance with an FDA approved comparability protocol. The supplement is then reviewed by FDA to assure that there is adequate evidence that the change will consistently result in a safe and effective product. As provided in §§ 314.70(g)(2)(iii) and 601.12(c)(3) of the final rule, the information to be submitted would be the same type of information as is required for a supplement subject to approval by FDA prior to distributing the product made using the change.

In the guidance documents being made available elsewhere in this issue of the **Federal Register**, FDA identifies a number of additional types of changes which, under its current interpretation of the rule, may be implemented 30 days after receipt by FDA of the supplement, but for which FDA approval before implementation would have been required under the proposed rule. In addition, the final rule provides that, for some other types of changes, implementation can occur immediately upon submission of the supplement to FDA. The reduction in delays gained by reducing the number of types of changes subject to supplement submission and prior approval by FDA before distribution of the product made using the change, and from the use of comparability protocols, can only be achieved if FDA has the opportunity to evaluate the information in the form of a supplement to assure that there is no long-term potential that the change or many sequential changes made over time may have an adverse effect on the product.

Potential applicants should be aware that complete review and approval of a supplement will take longer than 30 days. There may be instances where FDA determines, after the product made using the change has been distributed, that the information submitted in the supplement fails to adequately demonstrate the continued safety or effectiveness of the product made using the change. In such cases, FDA will make all possible efforts to resolve problems with the applicant concerning the supplement submission without requiring removal of the product from the marketplace. In assessing an applicant's plans to correct a problem, the agency intends to consider the applicant's reasons for making the change and the available alternatives to

the change. In cases where FDA determines that there may be a danger to public health due to the continued marketing of the product, or when FDA determines that the issues may not otherwise be resolved, the agency may require that the applicant cease distribution of the product made using the change or that the product be removed from distribution pending resolution of the issues related to the change.

8. One comment on proposed § 601.12(b)(2)(vi) (§ 601.12(b)(3)(vi) in the final rule) recommended that an applicant have the option of providing a detailed summary of the validation protocol and data, and the agency could request copies of the entire protocol and all data, if needed.

FDA disagrees with the comment. FDA believes that submission of the complete validation protocol and data is necessary to assure that FDA may fully evaluate any variability in test results that might not be apparent in a summary of test results. The agency has frequently encountered instances in which the average of the test results was within acceptable limits but variability in test results indicated a problem with the reproducibility of the test or demonstrated variability in product quality. In order to understand the implications of any such variability, it is necessary to review all data and the complete validation protocol specifying the test methodology used.

9. One comment recommended that only one supplement to a product license application should be necessary to implement a change by all facilities under a single establishment license.

This rulemaking does not address the overall licensing policies of the agency. In a related initiative, FDA is reviewing licensing policies and regulations. FDA will consider the comment in its general review of licensing policies and intends to publish additional documents in the **Federal Register** regarding licensing policies.

10. One comment on proposed § 601.12(c) suggested that the requirement for notification to FDA not less than 30 days prior to distributing the product be expanded to include a subcategory for permitting the notification of FDA concurrent with the distribution of the product made using the change.

FDA agrees with the comment. FDA believes 30 days is often necessary to assure that the supplement is complete and that the change qualifies for the moderate potential category. However, in other cases, such as when the change has been evaluated in accordance with an approved comparability protocol, or

where a change is one which in the agency's experience has always been reported by applicants in the correct category, and with the proper documentation, a change may be implemented immediately upon submission of the supplement. Accordingly, FDA is adding §§ 314.70(g)(2)(v) and 601.12(c)(5) in the final rule to provide that FDA may, for certain changes otherwise requiring submission of a supplement at least 30 days prior to distribution of the product made using the change, permit the distribution of the product to begin immediately upon receipt of the supplement by the agency. Such types of changes may be made in connection with approved comparability protocols or may be discussed in guidance documents.

11. One comment on proposed § 601.12(c) noted that the proposed rule did not specify the manner by which FDA would notify an applicant of its determination of whether the notification was accepted or if additional information was needed. The comment recommended that FDA establish a maximum time period, such as 21 days, after which the applicant can be assured that no request for significant information is forthcoming, thus allowing the applicant to begin marketing the product 30 days after submission with confidence that FDA has no objection.

As discussed earlier in this document, the final rule has replaced the "notification" with a supplement which may be implemented in 30 days. During the 30-day period from the date of receipt of a supplement, FDA will perform a preliminary review of the supplement to determine whether it is complete and whether the type of change qualifies under §§ 314.70(g)(2)(iv) or 601.12(c)(4) for distribution of the product made using the change 30 days after receipt of the supplement. The means of notifying the applicant of whether the supplement has been accepted as a "30-day supplement" depends on the individual circumstances surrounding the supplement. FDA recognizes that when there are problems with the supplement that may delay product distribution, the applicant should be notified as quickly as possible. Official notification will be by letter. To notify the applicant that the supplement has been received, FDA will send an acknowledgment letter assigning a reference number to the supplement.

Although FDA intends to perform this preliminary review as expeditiously as possible, there may be some cases where the entire 30-day period is necessary to

determine if the supplement is complete and qualifies for implementation 30 days after submission. It is the responsibility of the applicant to determine whether it should prepare to release the product 30 days after submission of the supplement, recognizing that the release may be delayed because of deficiencies in the supplement, or make other arrangements to better accommodate such a possibility.

12. In the preamble to the proposed rule, FDA requested comments as to whether the information to be included in an annual report under existing § 314.81(b)(2), currently applicable to nonbiological new drugs, should be applied to licensed biological products. One comment expressed the opinion that the information required under § 314.81(b)(2) is more onerous than the proposed requirements in § 601.12(d) and should not be applied. Another comment stated that the information required by § 314.81(b)(2) has little relevance to blood and plasma establishments.

FDA requested comment to determine if applicants who manufacture both drugs and biological products preferred that the required content of the annual reports for drugs and biologics be identical. Only two comments were received in response to the agency request and both opposed complete harmonization. The agency is committed to harmonizing reporting requirements for drugs and biologics as much as possible and will continue to evaluate the need for identical content in annual reports. However, based on comments received, FDA has determined that it would be appropriate to harmonize the requirements for the annual report as they relate only to manufacturing changes at this time. The final rule at § 314.70(g)(3) references the annual report requirements for drugs approved under a new drug application (NDA) for products subject to § 314.70(g). For biological products, the language in § 601.12(d)(2)(i) through (d)(2)(vii) will require the same type and amount of information for manufacturing changes as is required under § 314.81(b)(iv)(b). This harmonizes the reporting requirements as they relate to postapproval changes for drugs and biologics without adding, for biological products, the additional requirements for other information required in an annual report for a drug approved under an NDA. The full description of the changes would include pertinent data from studies and tests performed to evaluate the effect of the change on the safety and effectiveness of the product. This differs

from the proposed rule and is now appropriate because more changes that previously required submission of a supplement to FDA under the proposed rule will now require only the submission of an annual report. These data will allow the agency to help assess the impact of numerous changes that may occur to a product over time.

13. One comment on proposed § 601.12(d) asked whether the annual report should include a description of all changes or only those not otherwise reported to FDA under the proposed regulations.

The annual report should include information concerning only those changes that have not previously been reported to FDA in a supplement.

FDA recognizes the need to avoid redundant reporting of changes. Some products, particularly blood and blood components, are closely related and a single change may affect multiple products. Under the proposed rule, a minor change, which has a minimal potential to have an adverse effect on the safety or effectiveness of the product, would be reported in the annual report for each affected product on or about the first anniversary date of the approval of the application for the product. In § 601.12(d)(1) of the final rule, FDA is adding a provision to permit an applicant to request an alternative date for submission of an annual report so that multiple reports may be combined into a single combined annual report submission.

14. One comment on proposed § 601.12(d) asked for a clarification as to whether the annual report should include facility changes of the type previously contained in an establishment license application but for which FDA no longer requires submission in an application for a specified biotechnology product (see the final rule published in the **Federal Register** of May 14, 1996 (61 FR 24227)).

If the change relates to a matter which, under current procedures, would not be described in an original application and its supplements, reporting of the change is not required.

15. Two comments on proposed § 601.12(e) (§ 601.12(f) in the final rule) recommended that § 601.12(e)(4) be replaced by a cross-reference to § 314.70 so that all changes to advertising and promotional labeling for drug and biological products would be covered by one set of regulations. One additional comment recommended that proposed § 601.12(e) cross-reference § 314.70 for labeling changes and recommended that proposed § 601.12(e)(4) regarding advertisements and promotional

labeling replace existing § 601.45 (21 CFR 601.45).

Section 601.45 applies only to promotional materials relating to biological products intended for serious or life-threatening illness being considered for accelerated approval. FDA believes these requirements continue to be necessary for biological products being considered for accelerated approval.

FDA considered consolidating the requirements for advertising and labeling for drugs and biologics under one set of regulations but decided that the regulations are more useful if all requirements applicable to the reporting of changes to a license of a biological product are directly or indirectly included in one separate set of regulations. Advertisements and promotional labeling for both licensed biological products and drug products with approved NDA must be reported in accordance with the same requirements of § 314.81(b)(3), except that, as discussed previously in this document, different forms will be used until the final revised harmonized form is available.

16. One comment on proposed § 601.12(e)(2)(i)(D) (§ 601.12(f)(2)(i)(D) in the final rule), noted that to submit a labeling change to "delete false, misleading, or unsupported indications for use or claims for effectiveness" would be equivalent to acknowledging that the product has been misbranded. The comment asked for examples of when there might be circumstances when FDA would have previously approved a label that so misbranded the product.

Although this type of labeling change is infrequent, it has occurred in the past. For example, analyses of the results of postapproval studies may show that information included in the approved labeling is false or unsupported. Occasionally, an applicant may discover after approval of the product that data obtained from the clinical or laboratory studies sponsored by the applicant contained false information or, upon reevaluation, does not support claims made in the labeling. Also, the applicant may determine that persons using the product are making incorrect inferences from wording in the labeling and wording changes are necessary to ensure that the product is not used inappropriately. Changes made in the above instances would be reported in accordance with § 601.12(f)(2)(i)(D).

17. One comment recommended the deletion of § 610.9 because it is redundant with provisions in the proposed rule.

FDA disagrees with the comment but believes that the relationship among § 610.9, a similar regulation in § 640.120, and the regulations in the final rule should be clarified. Section 610.9 provides procedures for a manufacturer of a biological product to modify a particular test method or manufacturing process, which is specified in the biologics regulations upon demonstrating to FDA that the modification will provide assurances of the effects on the safety and effectiveness of the biological product equal to or greater than the test method or process specified in the regulations. Section 640.120 provides procedures for licensed and unlicensed manufacturers of blood, blood components, and blood products to obtain FDA approval for an exception or alternative to any requirement in part 640 (21 CFR part 640), subchapter F. Sections 610.9 and 640.120 are intended to provide flexibility for an applicant to obtain FDA approval of a change to a test method, manufacturing process, or other requirement from that specified in the regulations.

Section 601.12 of the final rule provides for the reporting of changes, including those for which approval under §§ 610.9 or 640.120 is required. In some cases, a change requiring approval under §§ 610.9 or 640.120 may be eligible for distribution 30 days after FDA's receipt of the supplement requesting approval of the change. Accordingly, FDA is amending §§ 610.9 and 640.120 in the final rule to clarify that FDA may permit changes submitted under § 610.9 or changes submitted by licensed establishments under § 640.120 to be distributed as provided in §§ 601.12(b) and (c) of the final rule.

FDA is also taking this opportunity to amend § 610.9 to clarify that a request for approval of an equivalent method or process can be submitted either as part of the original application (or as an amendment to the original, pending application) or as a supplement to the approved application. Section 610.9 previously specified that the request should be submitted as a license supplement.

18. One comment urged that CBER continue to be directly involved in inspections of well-characterized biotechnology products so that the agency may provide proper scientific review and oversight of those changes not reported before product distribution.

FDA agrees that appropriate scientific oversight should be given to help assure the continued safety and effectiveness of the products, particularly when there is a significant change in a method of manufacture. The agency will consider

the comment when reviewing its overall inspectional policies.

19. One comment recommended that the review and regulation of all well-characterized biotechnology products be consolidated into one office serving both CDER and CBER.

This comment is outside the scope of this final rule. FDA is not considering such a reorganization at this time.

20. One comment recommended deletion of parts 610 through 680 (21 CFR parts 610 through 680) because these requirements are more appropriately addressed in approved marketing applications, compendia, and guidance documents.

In the **Federal Register** of August 1, 1996 (61 FR 40153), FDA issued a final rule removing the regulations in parts 620, 630, and 650 in their entirety and removing sections of parts 610, 640, 660, and 680. The remaining regulations continue to be under review within the agency and FDA intends to pursue additional rulemaking at a later date proposing to retain, revise, or remove many of the remaining regulations.

21. One comment from a licensed blood establishment recommended that a product license application supplement not be required for a change relating to a device which has received 510(k) clearance from FDA. The comment noted that the applicant should be permitted to implement the change with concurrent notification.

FDA disagrees with the comment. On occasion, a licensed blood establishment may change the type of equipment used in the collection or processing of blood and blood components. For example, a blood establishment may decide to change from using manual pheresis equipment for the collection of Source Plasma or other blood components to automated equipment which has already been cleared for such use as a medical device, either with an approved premarket approval application or cleared as substantially equivalent under section 510(k) of the act (21 U.S.C. 360(k)). The purpose of the supplement to the product license application is to assure that the use of the equipment has been properly validated at the blood establishment, that the persons using the equipment have been properly trained, and that appropriate standard operating procedures are in place to assure the safety of the donors from whom the blood components will be collected. FDA believes that a change from manual to automated pheresis equipment that is not properly implemented may have a substantial potential to have an adverse effect on the health of the donors as well as on

the safety and effectiveness of the products being collected. For this reason, FDA believes that a supplement submission to convert from manual to automated pheresis equipment should be subject to approval by FDA before the change is implemented. FDA notes that for certain other types of similar changes, such as changing from one type of automated equipment to another, there is less potential for an adverse effect and the product made using the change may be distributed 30 days after receipt by FDA of the supplement reporting the change.

22. One comment recommended that FDA not set specific requirements for submission of changes to a pending application. This flexibility could help expedite the approval of life-saving products, such as a new treatment for cancer.

Former § 601.12 applied both to changes to an approved application and to changes to a pending application. In the preamble to the proposed rule (61 FR 2739 at 2742), FDA announced its intention to consider whether it is appropriate to issue specific requirements for submitting amendments to pending license applications as part of its review of licensing requirements. The review of licensing requirements continues; however, FDA recognizes that its regulations and policies must provide adequate flexibility to accommodate the wide variety of products which are subject to licensure.

The agency has already taken a number of steps to ensure the expeditious review and approval of important new drugs and biologics, including a commitment under the Prescription Drug User Fee Act of 1992 (Pub. L. 102-571) to endeavor to complete the review of applications for "breakthrough" drugs and biologics within certain specified timeframes. Efforts to improve the system for the review and approval of important new drugs and biological products are continuing.

23. One comment requested that FDA discontinue its policy of requiring submission of plateletpheresis products for quality control testing as a prerequisite for license approval for such products.

The comment is beyond the scope of this rulemaking, which deals with the procedures for the reporting of changes to a license application. FDA notes, however, that for the present time, the agency plans to continue its practice of performing quality control testing as part of its review of a license application relating to a plateletpheresis product. Plateletpheresis is a

sophisticated process, requiring considerable expertise to perform properly. In recent quality control testing, performed in 1996, FDA found that 26 of 279 samples submitted did not meet appropriate specifications. Results from additional samples indicated problems with pheresis procedures. See § 640.25(b) for additional standards regarding quality control testing. Because of this relatively high rate of failure, FDA believes that continued quality control testing by the agency is necessary to assure the continued safety and effectiveness of plateletpheresis products.

24. One comment recommended that FDA provide an applicant with a specific, detailed, written explanation for finding a license "not approvable" and that compliance deficiencies unrelated to the change specified in the application should not justify a "not approvable" decision.

The comment is beyond the scope of this rulemaking, which deals with the procedures for the reporting of changes. The entire licensing process, including the review and approval of license supplements, continues to be under review within FDA. This comment will be considered by the agency as part of its review of the licensing process.

25. One comment recommended that the final rule be made effective immediately upon its publication to provide immediate relief from excess reporting burdens.

FDA agrees the final rule should be implemented as soon as possible. Additional information regarding effective dates and other implementation issues is presented at the end of this preamble.

26. One comment on the "Analysis of Impacts" section of the preamble of the proposed rule noted that the analysis did not specify how many establishments were involved and whether the proposed regulations would truly result in a paperwork reduction. The comment requested that FDA describe more clearly the expected reduction in paperwork burdens.

The "Analysis of Impacts" sections of the proposed and final rules are based on an evaluation of those supplements submitted to FDA under the previous regulations during a specified time period. All applicants holding licenses for biological products or an NDA for those biotechnology products affected by § 314.70(g) are potential respondents. The analysis is based on the number of supplements submitted in the recent past which would, under the final rule, be subject to each form of reporting to FDA. From the burden hours associated with each of the possible means of

reporting to FDA, assuming the types of changes occurring under the final rule are comparable to those which were evaluated, the estimated change in costs to the applicant can be readily calculated.

FDA notes that the decrease in paperwork is only part of the relief from regulatory burdens achieved by the final rule. Under the new regulations many changes may be implemented more expeditiously and the product marketed more quickly. FDA believes this ability to readily market a product made with improved technology or improved labeling will be of considerable economic benefit to the applicant and the public. Because these benefits are indirect benefits, FDA does not have the information necessary to quantify the economic benefits associated with such timely marketing of products.

V. Effective Dates and Other Implementation Issues

The final rule is effective October 7, 1997. On or after that date, FDA will accept supplements submitted in accordance with the final rule. For supplements which have already been submitted to FDA and which are pending approval, the applicant should notify FDA as to whether it believes: (1) The supplement continues to be subject to approval by FDA before implementation of the change; (2) the change may be implemented but is subject to FDA approval as a supplement; or (3) the supplement should be withdrawn because review of the change as a supplement is no longer necessary and the change may be implemented and reported in an annual report. FDA will inform the applicant within 30 days of its receipt of this notification if it is not in agreement with the applicant's assessment.

FDA is requesting the submission of the initial annual report required by §§ 314.70(g)(3) and 601.12(d) and (f)(3) within 60 days of the first anniversary date of the approval of the application of the product occurring on or after January 20, 1998. For products with an earlier anniversary date, the annual report shall be submitted within 60 days of the next anniversary date and should report all applicable changes occurring since the time of issuance of the final rule.

VI. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact 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 impact; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the overall result of the final rule will be a substantial reduction in burdens on applicants seeking approval of a product subject to this rule. FDA anticipates that the final rule will facilitate an applicant's ability to market a product improved by a change in manufacturing or labeling without unnecessary delays while reducing the overall paperwork burden associated with reporting such a change to FDA. In addition, FDA anticipates that the final rule may encourage applicants to improve their licensed products, product labeling, and methods of manufacture.

Unless the head of the agency certifies that the rule does not impose a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The final rule will reduce the overall burdens associated with reporting changes in manufacturing and labeling of licensed biological products. It also provides increased flexibility for applicants in selecting the means of reporting manufacturing changes by providing for the use of a comparability protocol through which the agency may determine that the change has a decreased potential for an adverse effect on the safety and effectiveness of the product when compared with the potential generally associated with that type of change. In many cases under the final rule, an applicant will be able to market a product made using a change in manufacturing more rapidly than previously permitted under the regulations.

Because, as stated above, the overall result of the final rule will be a substantial reduction in the regulatory and reporting burdens, the Commissioner of Food and Drugs certifies that the 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.

Although no further analysis is required, in developing this final rule, the agency did consider the impact of the rule on small entities. The agency also considered various regulatory options to maximize the net benefits of the rule to small entities without compromising the agency's ability to assure the continued safety and effectiveness of the products to which the rule applies. The following analysis briefly examines the potential impact of the final rule on small businesses.

1. The Need for the Regulation

The purpose of the final rule is to amend the regulations for reporting to FDA changes to an approved application for a biological product in order to reduce unnecessary reporting burdens on applicants holding approved licenses to manufacture biological products and on applicants with an approved NDA for specified biotechnology products. FDA issued the proposed rule as part of its response to several mandates to reduce the burdens associated with government regulation, while assuring the continued safety and effectiveness of regulated products.

The final rule takes into account comments submitted to the Dockets Management Branch, and discussions and information obtained through public participation in the public meeting held on April 19, 1996, to discuss and gather information and views on the proposed rule and two draft guidance documents. The objective of the final rule is to harmonize regulations administered by CDER and CBER in FDA, to reduce unnecessary burdens, and improve the consistency in the processes for complying with FDA's regulations without diminishing public health protection.

As stated previously, FDA held an open public meeting during the comment period to facilitate public comment on this rule. FDA is announcing the availability of final guidance documents, revised from those proposed as a result of public comment, which are intended to aid applicants in complying with the requirements of this final rule.

2. Description of Requirements

Any applicant holding an approved marketing application for a licensed biological product or specified biotechnology product will be required to report a change in the approved manufacturing process or in labeling by

the appropriate procedure described in this final rule. The rule applies both to small and large for-profit business entities, and to small and large nonprofit organizations.

The agency believes the regulation is flexible and is consistent with contemporary standards. Because this final rule represents a decrease in reporting burdens and other economic burdens previously applicable to the same products, FDA believes that firms should have no problem with complying with these regulations. No particular professional skills are needed to assemble the information to be reported to FDA.

3. Types and Number of Firms Affected

Approximately 400 firms are affected by this final rule. Approximately half, primarily establishments with licenses for blood and blood component products, are nonprofit institutions. The remainder are large for-profit businesses.

4. Alternatives

A number of alternatives were considered in preparing this final rule. Each alternative was evaluated as to its adequacy in providing in a timely way the information needed for FDA to assure the continued safety and effectiveness of the affected products, and evaluated with regard to burdens related to paperwork and the applicant's ability to market a product made with a changed manufacturing process or distributed with revised labeling. The agency decided not to provide different reporting requirements for small businesses because such an alternative would threaten the continued safety and effectiveness of products marketed by small businesses. For all applicants, regardless of size, the agency believes it has selected the reporting alternatives which impose the minimum burdens upon the applicants while assuring the continued safety and effectiveness of the affected products.

5. Response to Comments

Only one comment was received concerning the Regulatory Flexibility Analysis provided in the proposed rule. The comment asked for further clarification regarding the projected reduction in burdens associated with the revised regulations. Most of the reduction in paperwork burdens, now projected as a 10 percent reduction, is associated with the fact that some changes which previously were subject to submission of a supplement and approval by FDA prior to distribution of the product made using the change may now be reported in an annual report

with a significant reduction in the information that is to be submitted. Considerable reduction in economic burdens is expected to result from the flexibility included in the final rule to permit the distribution of a product made using a change by the most timely means possible while assuring the continued safety and effectiveness of the product. Because FDA has no data to relate time saved in marketing a product with the resulting economic benefit, FDA cannot offer a monetary estimate of the savings at this time.

B. Review Under the Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 21 CFR 601.12—Changes to an Approved Application and 21 CFR 314.70(g)—*Exception.*

Description: This final rule revises the requirements for respondents to report to FDA changes in the product, labeling, production process, equipment, quality controls facilities, or responsible personnel established in an approved application for a biological product or for a specified biotechnology product. The respondent will report a change to FDA in one of the three following ways depending on the potential for the change to have an adverse effect on the identity, strength, quality, purity, or

potency of the product as they may relate to the safety or effectiveness of the product: (1) Changes that have a significant potential to have an adverse effect on the product will be submitted in a supplement requiring prior approval by FDA before distribution of the product made using the change; (2) changes that have a moderate potential to have an adverse effect on the product will be submitted to FDA in a supplement not less than 30 days prior to distribution of the product made using the change unless FDA permits distribution upon its receipt of the supplement; and (3) changes that have a minimal potential to have an adverse effect on the product will be submitted by the respondent in an annual report.

Labeling changes for a biological product will also be submitted in one of the following ways: (1) A supplement requiring FDA approval prior to distribution of product with the revised labeling; (2) a supplement requiring FDA approval but permitting the distribution of the product with the accompanying revised labeling at the time the supplement is submitted; or (3) submission of final printed labeling in an annual report. Promotional labeling and advertising will be submitted in accordance with § 314.81(b)(3)(i). Labeling changes for biotechnology products regulated under the act but not under the PHS Act are not addressed in § 314.70(g) and will not be affected by this final rule. The agency is developing technology to permit the submission of the information required by this rule electronically. The agency anticipates that the use of electronic media will substantially further reduce the paperwork burden associated with these reporting requirements.

Description of Respondents: All manufacturers and applicants holding a

biological license approved under section 351 of the PHS Act, and all manufacturers and applicants of specified biotechnology products holding an approved NDA.

Burden estimate: As mentioned in the proposed rule, FDA estimates that 20 percent of all reports required under these final regulations will be prepared by contractors. The burden hours for affected industry in the chart below therefore reflect a 20 percent reduction. It is estimated that a contractor will charge \$40 per hour for the service of preparing these reports. The 20 percent burden hours multiplied by \$40 per hour are reflected in the table, under the column labeled “Operating and Maintenance Costs.”

The burden estimate for this final rule differs from the estimate given for the proposed rule (see 61 FR 2739 at 2745) in two important respects. First, FDA has revised §§ 314.70(g)(2) and 601.12(c) in the final rule to require submission of a supplement rather than a notification for changes that have a moderate potential to have an adverse effect on the safety or effectiveness of the product. This revision will result in an estimated 10 additional burden hours per submission (50 for a supplement versus 40 for a notification). Second, substantially more supplements concerning changes in manufacturing and labeling for biological products are being submitted than during the time period used to prepare the estimate in the proposed rule (an estimated 2,300 submissions in 1996 versus 1,550 submissions in 1994). Although this increase results from increased industry activity, not from any modification to the proposed rule, the burden estimate has been adjusted to reflect the increase.

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Number of Respondents	Hours Per Response	Number of Responses	Number of Responses Per Respondent	Total Operating and Maintenance Costs	Total Hours Per Regulation
601.12(b)	391	80	900	2.3	\$576,000	57,600
601.12(c)	391	50	720	1.8	\$288,000	28,800
601.12(d)	391	10	120	0.3	\$9,600	960
601.12(f)(1)	391	40	200	0.51	\$64,000	6,400
601.12(f)(2)	391	20	20	0.05	\$3,200	320
601.12(f)(3)	391	10	220	0.56	\$17,600	1,760
601.12(f)(4)	391	10	110	0.28	\$8,800	880
314.70(g)(1)	4	80	50	12.5	\$32,000	3,200
314.70(g)(2)	2	50	3	1.5	\$1,200	120
314.70(g)(3)	6	10	20	3.33	\$1,600	160
TOTALS					\$1,002,000	\$100,200

There are no capital costs associated with this collection of information.

As required by section 3506(c)(2)(B) of the Paperwork Reduction Act of 1995

(the PRA), FDA provided an opportunity for public comment on the

information collection provisions of the proposed rule. All comments received

agreed that FDA's proposal to modify the requirements for reporting changes to approved applications would reduce the burden to industry without diminishing public health protection. Even with the increase in burden in the final rule as compared with the proposed rule, FDA estimates that the modified reporting requirements will achieve a net burden reduction of approximately 10,000 hours per year.

As required by section 3507(d)(1)(A) of the PRA, FDA submitted the information collection provisions of the proposed rule to OMB. Although these provisions were approved, FDA has submitted the information collection provisions of the final rule to OMB for review because of the revised requirement to submit a supplement rather than a notification for changes that have a moderate potential to have an adverse effect on the safety or effectiveness of the product. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

C. 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 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 314, 600, 601, 610 and 640 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

2. Section 314.70 is amended by adding a new paragraph (g) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(g) *Exception.* An applicant proposing to make a change of a type described in paragraphs (a), (b)(1), (b)(2), (c)(1), (c)(3), (d)(1), and (d)(4) through (d)(9) of this section affecting a recombinant DNA-derived protein/polypeptide product or a complex or conjugate of a drug with a monoclonal antibody regulated under the Federal Food, Drug, and Cosmetic Act shall comply with the following:

(1) *Changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes).* (i) A supplement shall be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product.

(ii) These changes include, but are not limited to:

(A) Changes in the qualitative or quantitative formulation or other specifications as provided in the approved application or in the regulations;

(B) Changes requiring completion of an appropriate human study to demonstrate the equivalence of the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product;

(C) Changes in the virus or adventitious agent removal or inactivation method(s);

(D) Changes in the source material or cell line;

(E) Establishment of a new master cell bank or seed; and

(F) Changes which may affect product sterility assurance, such as changes in product or component sterilization method(s) or an addition, deletion, or substitution of steps in an aseptic processing operation.

(iii) The applicant must obtain approval of the supplement from FDA prior to distribution of the product made using the change. Except for submissions under paragraph (g)(4) of this section, the following shall be contained in the supplement:

(A) A detailed description of the proposed change;

(B) The product(s) involved;

(C) The manufacturing site(s) or area(s) affected;

(D) A description of the methods used and studies performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product;

(E) The data derived from such studies;

(F) Relevant validation protocols and data; and

(G) A reference list of relevant standard operating procedures (SOP's).

(2) *Changes requiring supplement submission at least 30 days prior to distribution of the product made using the change.* (i) A supplement shall be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product. The supplement shall be labeled "Supplement—Changes Being Effected in 30 Days" or, if applicable under paragraph (g)(2)(v) of this section, "Supplement—Changes Being Effected."

(ii) These changes include, but are not limited to:

(A) Change in the site of testing from one facility to another;

(B) An increase or decrease in production scale during finishing steps that involves new or different equipment; and

(C) Replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology or process operating parameters.

(iii) Pending approval of the supplement by FDA, and except as provided in paragraph (g)(2)(v) of this section, distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA. The information listed in paragraph (g)(1)(iii)(A) through

(g)(1)(iii)(G) of this section shall be contained in the supplement.

(iv) If within 30 days following FDA's receipt of the supplement, FDA informs the applicant that either:

(A) The change requires approval prior to distribution of the product in accordance with paragraph (g)(1) of this section; or

(B) Any of the information required under paragraph (g)(2)(iii) of this section is missing; the applicant shall not distribute the product made using the change until FDA determines that compliance with this section is achieved.

(v) In certain circumstances, FDA may determine that, based on experience with a particular type of change, the supplement for such change is usually complete and provides the proper information, and on particular assurances that the proposed change has been appropriately submitted, the product made using the change may be distributed immediately upon receipt of the supplement by FDA. These circumstances may include substantial similarity with a type of change regularly involving a "Supplement—Changes Being Effected" supplement, or a situation in which the applicant presents evidence that the proposed change has been validated in accordance with an approved protocol for such change under paragraph (g)(4) of this section.

(3) *Changes to be described in an annual report (minor changes)*. (i) Changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product shall be documented by the applicant in the next annual report in accordance with § 314.81(b)(2)(iv).

(ii) These changes include, but are not limited to:

(A) Any change made to comply with an official compendium that is consistent with FDA requirements;

(B) The deletion of an ingredient intended only to affect the color of the product;

(C) An extension of an expiration date based upon full shelf life data obtained from a protocol approved in the application;

(D) A change within the container and closure system for solid dosage forms, based upon a showing of equivalency to the approved system under a protocol approved in the application or published in an official compendium;

(E) A change in the size of a container for a solid dosage form, without a

change from one container and closure system to another;

(F) The addition by embossing, debossing, or engraving of a code imprint to a solid dosage form drug product other than a modified release dosage form, or a minor change in an existing code imprint; and

(G) The addition or deletion of an alternate analytical method.

(4) An applicant may submit one or more protocols describing the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product. Any such protocols, or change to a protocol, shall be submitted as a supplement requiring approval from FDA prior to distribution of the product which, if approved, may justify a reduced reporting category for the particular change because the use of the protocol for that type of change reduces the potential risk of an adverse effect.

* * * * *

PART 600—BIOLOGICAL PRODUCTS: GENERAL

3. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25).

4. Section 600.3 is amended by adding new paragraphs (ff) and (gg) to read as follows:

§ 600.3 Definitions.

* * * * *

(ff) *Amendment* is the submission of information to a pending license application or supplement, to revise or modify the application as originally submitted.

(gg) *Supplement* is a request to the Director, Center for Biologics Evaluation and Research, to approve a change in an approved license application.

PART 601—LICENSING

5. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381); secs. 215, 301, 351, 352, of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263);

secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

6. Section 601.12 is revised to read as follows:

§ 601.12 Changes to an approved application.

(a) *General*. As provided by this section, an applicant shall inform Food and Drug Administration (FDA) about each change in the product, production process, quality controls, equipment, facilities, responsible personnel, or labeling, established in the approved license application(s). Before distributing a product made using a change, an applicant shall demonstrate through appropriate validation and/or other clinical and/or non-clinical laboratory studies, the lack of adverse effect of the change on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product.

(b) *Changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes)*. (1) A supplement shall be submitted for any change in the product, production process, quality controls, equipment, facilities, or responsible personnel that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product.

(2) These changes include, but are not limited to:

(i) Changes in the qualitative or quantitative formulation or other specifications as provided in the approved application or in the regulations;

(ii) Changes requiring completion of an appropriate human study to demonstrate the equivalence of the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product;

(iii) Changes in the virus or adventitious agent removal or inactivation method(s);

(iv) Changes in the source material or cell line;

(v) Establishment of a new master cell bank or seed; and

(vi) Changes which may affect product sterility assurance, such as changes in product or component sterilization method(s), or an addition, deletion, or substitution of steps in an aseptic processing operation.

(3) The applicant must obtain approval of the supplement from FDA prior to distribution of the product made using the change. Except for

submissions under paragraph (e) of this section, the following shall be contained in the supplement:

- (i) A detailed description of the proposed change;
- (ii) The product(s) involved;
- (iii) The manufacturing site(s) or area(s) affected;
- (iv) A description of the methods used and studies performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product;
- (v) The data derived from such studies;
- (vi) Relevant validation protocols and data; and
- (vii) A reference list of relevant standard operating procedures (SOP's).

(c) *Changes requiring supplement submission at least 30 days prior to distribution of the product made using the change.* (1) A supplement shall be submitted for any change in the product, production process, quality controls, equipment, facilities, or responsible personnel that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product. The supplement shall be labeled "Supplement—Changes Being Effected in 30 Days" or, if applicable under paragraph (c)(5) of this section, "Supplement—Changes Being Effected."

(2) These changes include, but are not limited to:

- (i) Change in the site of testing from one facility to another;
- (ii) An increase or decrease in production scale during finishing steps that involves new or different equipment; and
- (iii) Replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology or process operating parameters.

(3) Pending approval of the supplement by FDA, and except as provided in paragraph (c)(5) of this section, distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA. The information listed in paragraph (b)(3)(i) through (b)(3)(vii) of this section shall be contained in the supplement.

(4) If within 30 days following FDA's receipt of the supplement, FDA informs the applicant that either:

- (i) The change requires approval prior to distribution of the product in accordance with paragraph (b) of this section; or
- (ii) Any of the information required under paragraph (c)(3) of this section is

missing; the applicant shall not distribute the product made using the change until FDA determines that compliance with this section is achieved.

(5) In certain circumstances, FDA may determine that, based on experience with a particular type of change, the supplement for such change is usually complete and provides the proper information, and on particular assurances that the proposed change has been appropriately submitted, the product made using the change may be distributed immediately upon receipt of the supplement by FDA. These circumstances may include substantial similarity with a type of change regularly involving a "Supplement—Changes Being Effected" supplement or a situation in which the applicant presents evidence that the proposed change has been validated in accordance with an approved protocol for such change under paragraph (e) of this section.

(d) *Changes to be described in an annual report (minor changes).* (1) Changes in the product, production process, quality controls, equipment, facilities, or responsible personnel that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product shall be documented by the applicant in an annual report submitted each year within 60 days of the anniversary date of approval of the application. The Director, Center for Biologics Evaluation and Research, may approve a written request for an alternative date to combine annual reports for multiple approved applications into a single annual report submission.

(2) These changes include, but are not limited to:

- (i) Any change made to comply with an official compendium that is consistent with FDA requirements;
- (ii) The deletion of an ingredient intended only to affect the color of the product except that a change intended only to affect Blood Grouping Reagents requires supplement submission and approval prior to distribution of the product made using the change in accordance with the requirements set forth in paragraph (b) of this section;
- (iii) An extension of an expiration date based upon full shelf-life data obtained from a protocol approved in the application;

(iv) A change within the container and closure system for solid dosage forms, based upon a showing of equivalency to the approved system under a protocol approved in the

application or published in an official compendium;

(v) A change in the size of a container for a solid dosage form, without a change from one container and closure system to another;

(vi) The addition by embossing, debossing, or engraving of a code imprint to a solid dosage form biological product other than a modified release dosage form, or a minor change in an existing code imprint; and

(vii) The addition or deletion of an alternate analytical method.

(3) The following information for each change shall be contained in the annual report:

(i) A list of all products involved; and

(ii) A full description of the manufacturing and controls changes including: the manufacturing site(s) or area(s) involved; the date the change was made; a cross-reference to relevant validation protocols and/or SOP's; and relevant data from studies and tests performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product.

(4) The applicant shall submit the report to the FDA office responsible for reviewing the application. The report shall include all the information required under this paragraph for each change made during the annual reporting interval which ends on the anniversary date in the order in which they were implemented.

(e) An applicant may submit one or more protocols describing the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product. Any such protocols, or change to a protocol, shall be submitted as a supplement requiring approval from FDA prior to distribution of the product which, if approved, may justify a reduced reporting category for the particular change because the use of the protocol for that type of change reduces the potential risk of an adverse effect.

(f) *Labeling changes.* (1) Labeling changes requiring supplement submission—FDA approval must be obtained before distribution of the product with the labeling change. Except as described in paragraphs (f)(2) and (f)(3) of this section, an applicant shall submit a supplement describing a proposed change in the package insert, package label, or container label, and include the information necessary to

support the proposed change. The supplement shall clearly highlight the proposed change in the labeling. The applicant shall obtain approval from FDA prior to distribution of the product with the labeling change.

(2) *Labeling changes requiring supplement submission—product with a labeling change that may be distributed before FDA approval.* (i) An applicant shall submit, at the time such change is made, a supplement for any change in the package insert, package label, or container label to accomplish any of the following:

(A) To add or strengthen a contraindication, warning, precaution, or adverse reaction;

(B) To add or strengthen a statement about abuse, dependence, psychological effect, or overdosage;

(C) To add or strengthen an instruction about dosage and administration that is intended to increase the safety of the use of the product; and

(D) To delete false, misleading, or unsupported indications for use or claims for effectiveness.

(ii) Pending approval of the supplement by FDA, the applicant may distribute a product with a package insert, package label, or container label bearing such change at the time the supplement is submitted. The supplement shall clearly identify the change being made and include necessary supporting data. The supplement and its mailing cover shall be plainly marked: "Special Labeling Supplement—Changes Being Effected."

(3) *Labeling changes requiring submission in an annual report.* (i) An applicant shall submit any final printed package insert, package label, or container label incorporating the following changes in an annual report submitted to FDA each year as provided in paragraph (d)(1) of this section:

(A) Editorial or similar minor changes; and

(B) A change in the information on how the product is supplied that does not involve a change in the dosage strength or dosage form.

(ii) The applicant may distribute a product with a package insert, package

label, or container label bearing such change at the time the change is made.

(4) *Advertisements and promotional labeling.* Advertisements and promotional labeling shall be submitted to the Center for Biologics Evaluation and Research in accordance with the requirements set forth in § 314.81(b)(3)(i) of this chapter, except that Form FDA-2567 (Transmittal of Labels and Circulars) or an equivalent form shall be used.

(g) *Failure to comply.* In addition to other remedies available in law and regulations, in the event of repeated failure of the applicant to comply with this section, FDA may require that the applicant submit a supplement for any proposed change and obtain approval of the supplement by FDA prior to distribution of the product made using the change.

(h) *Administrative review.* Under § 10.75 of this chapter, an applicant may request internal FDA review of FDA employee decisions under this section.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

7. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

8. Section 610.9 is revised to read as follows:

§ 610.9 Equivalent methods and processes.

Modification of any particular test method or manufacturing process or the conditions under which it is conducted as required in this part or in the additional standards for specific biological products in parts 620 through 680 of this chapter shall be permitted only under the following conditions:

(a) The applicant presents evidence, in the form of a license application, or a supplement to the application submitted in accordance with § 601.12(b) or (c), demonstrating that the modification will provide assurances of

the safety, purity, potency, and effectiveness of the biological product equal to or greater than the assurances provided by the method or process specified in the general standards or additional standards for the biological product; and

(b) Approval of the modification is received in writing from the Director, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

9. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

10. Section 640.120 is amended by revising paragraph (a) to read as follows:

§ 640.120 Alternative procedures.

(a) The Director, Center for Biologics Evaluation and Research, may approve an exception or alternative to any requirement in subchapter F of chapter I of title 21 of the Code of Federal Regulations regarding blood, blood components, or blood products. Requests for such exceptions or alternatives shall ordinarily be in writing. Licensed establishments shall submit such requests in accordance with § 601.12 of this chapter. However, in limited circumstances, such requests may be made orally and permission may be given orally by the Director. Oral requests and approvals must be promptly followed by written requests and written approvals.

* * * * *

Dated: May 27, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-19427 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D-0415]

Guidance for Industry: Changes To An Approved Application For Specified Biotechnology and Specified Synthetic Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled, "Guidance for Industry: Changes To An Approved Application For Specified Biotechnology and Specified Synthetic Biological Products." The guidance document is intended to assist manufacturers in determining which reporting mechanism is appropriate for a change to an approved license application under the final rule "Changes To An Approved Application," issued elsewhere in this issue of the **Federal Register**. In a separate document also published in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled, "Guidance for Industry: Changes To An Approved Application: Biological Products," to assist applicants in determining how they should report changes to an approved license application for biologic products other than specified biotechnology and specified synthetic biological products under the final rule. The guidance document announced in this notice revises the draft guidance entitled, "Draft Guidance; Changes To An Approved Application for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products" announced in the **Federal Register** of January 29, 1996 (61 FR 2748).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled, "Guidance for Industry: Changes To An Approved Application For Specified Biotechnology and Specified Synthetic Biological Products" to the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, or Center for Drug Evaluation and Research (HFD-

210), Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. Submit written comments on the guidance document to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Valerie A. Butler, Center for Biologics Evaluation and Research (HFM-630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074, or Yuan Yuan Chiu, Center for Drug Evaluation and Research (HFD-800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0260.

SUPPLEMENTARY INFORMATION:

The guidance document announced in this notice represents the agency's current thinking on changes to an approved application for specified biotechnology and specified synthetic biological products listed in 21 CFR 601.2(c), recombinant DNA-derived protein/polypeptide products approved under the Federal Food, Drug, and Cosmetic Act (the act), and complexes or conjugates of a drug with a monoclonal antibody approved under the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the INTERNET may obtain the guidance document by using the World Wide Web (WWW), or bounce-back e-mail. For WWW access,

connect to CBER at "http://www.fda.gov/cber/cberftp.html". To receive the guidance document by bounce-back e-mail, send a message to "CHARACTER@a1.cber.fda.gov".

Received comments will be considered in determining whether further revision of the guidance document is warranted.

Dated: May 28, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-19426 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D-0052]

Guidance for Industry: Changes To An Approved Application: Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled, "Guidance for Industry: Changes To An Approved Application: Biological Products." The guidance document is intended to assist manufacturers in determining which reporting mechanism is appropriate for a change to an approved application, to reduce the burden on manufacturers of reporting changes, and to facilitate the approval process. The guidance document applies to all licensed biological products and establishments, including Whole Blood, blood components, Source Plasma, and Source Leukocytes, but not including specified biotechnology and specified synthetic biological products, or products formerly referred to as well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. The guidance document announced in this notice revises the draft guidance entitled, "Changes To An Approved Application; Draft Guidance," announced in the **Federal Register** of January 29, 1996 (61 FR 2749).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Changes To An Approved Application: Biological Products," to the Office of Communication, Training and Manufacturers Assistance (HFM-40),

Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. Submit written comments on the guidance document to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM-630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance document entitled, "Guidance for Industry: Changes To An Approved Application: Biological Products." The guidance document is issued in accordance with the principles set forth in Executive Order 12866, in a continuing effort to reduce unnecessary reporting burdens on manufacturers holding licenses approved by the Center for Biologics Evaluation and Research (CBER) under section 351 of the Public Health Service Act.

As announced in the **Federal Register** of January 9, 1995 (60 FR 2351), FDA held a public meeting on January 26, 1995, as a forum for the public to voice their comments regarding CBER's retrospective review of biologics regulations. In comments made to the public docket, and at the January 26, 1995, public meeting, representatives from the biologics industry requested that FDA modify § 601.12 (21 CFR 601.12) to be more flexible and less burdensome.

FDA published the guidance document entitled, "Changes To Be Reported for Product and Establishment License Applications; Guidance," in the **Federal Register** of April 6, 1995 (60 FR 17535). In a continuing effort to reduce unnecessary reporting burdens and in response to comments received on the April 6, 1995, guidance document, FDA published the proposed rule entitled, "Changes To An Approved Application" in the **Federal Register** of January 29, 1996 (61 FR 2739). FDA proposed to amend the biologics regulations for reporting changes to an approved application. In the same issue of the **Federal Register**, FDA announced

the availability of a draft guidance document entitled, "Changes To An Approved Application; Draft Guidance." The draft guidance document, issued for public comment only, set forth CBER'S interpretation of the proposed rule to amend § 601.12. In addition, FDA announced the availability of the draft guidance document entitled, "Draft Guidance; Changes To An Approved Application For Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products," which applied only to well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products.

As announced in the **Federal Register** of March 28, 1996 (61 FR 13793), FDA held a public meeting on April 19, 1996, to discuss and gather information on the proposal to amend the biologics regulations for reporting changes to an approved application and the two closely related draft guidance documents that were made available concurrently. In comments received on the proposed rule and the draft guidance documents, representatives from the biologics industry asked that a category system of changes to be reported be implemented that would include changes that can be made without prior approval. FDA has considered all comments and developed a regulatory scheme in response to the requests.

Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule entitled, "Changes To An Approved Application." In addition to the guidance document announced in this notice, FDA is announcing the availability of a guidance document entitled, "Guidance for Industry: Changes To An Approved Application For Specified Biotechnology and Specified Synthetic Biological Products," that revises the draft guidance document entitled, "Draft Guidance; Changes To An Approved Application For Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products."

The guidance document announced in this notice is intended to assist manufacturers in determining how a change to an approved application should be reported or documented under the revised § 601.12 for changes to a product, production process, quality controls, equipment, facilities, responsible personnel, or labeling. The guidance document lists the three-category scheme for reporting biological product changes.

The guidance document includes examples of changes to be reported under the three reporting categories applicable to all biological products, including Whole Blood, blood components, Source Plasma, and Source Leukocytes, but not including specified biotechnology and specified synthetic biological products. The "Guidance for Industry: Changes To An Approved Application: Biological Products" supersedes the guidance document entitled, "Changes To Be Reported for Product and Establishment License Applications; Guidance" (April 1995) and reflects revisions made to § 601.12 in the final rule.

As with other procedural guidance documents, FDA does not intend this guidance document to be all-inclusive. Alternative approaches might be warranted in specific situations, and certain aspects would not be applicable to all situations. If a manufacturer believes that the procedure described in this guidance document would be inapplicable to a particular product and other procedures would be appropriate for CBER's consideration, the manufacturer may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that later may be determined to be unacceptable by FDA. CBER will continue to review submissions on a case-by-case basis.

The guidance document announced in this notice represents the agency's current thinking on changes to an approved application for all licensed biological products, except specified biotechnology and specified synthetic biological products listed in 21 CFR 601.2. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain the guidance document by using the World Wide Web (WWW), or bounce-back e-mail. For WWW access,

connect to CBER at "http://www.fda.gov/cber/cberftp.html". To receive the guidance document by bounce-back e-mail, send a message to "CHANGES@a1.cber.fda.gov".

Received comments will be considered in determining whether further revision of the guidance document is warranted.

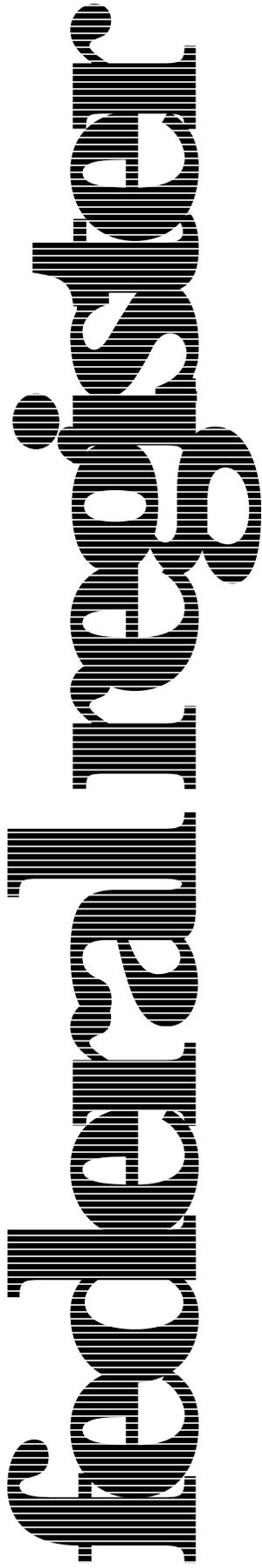
Dated: May 28, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-19412 Filed 7-23-97; 8:45 am]

BILLING CODE 4160-01-F



Thursday
July 24, 1997

Part III

**Federal Emergency
Management Agency**

**44 CFR Part 62
National Flood Insurance Program;
Assistance to Private Sector Property
Insurers; Final Rule**

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Part 62**

RIN 3067-AC62

**National Flood Insurance Program;
Assistance to Private Sector Property
Insurers**AGENCY: Federal Insurance
Administration (FEMA).

ACTION: Final rule.

SUMMARY: This rule amends the National Flood Insurance Program (NFIP) regulations establishing the Financial Assistance/Subsidy Arrangement. This Arrangement may be entered into by and between the Administrator and private sector insurers under the Write Your Own (WYO) program. The amendments to the Arrangement: reduce the range between the minimum and maximum amount of premium income a company may retain as an expense allowance as a result of its marketing performance; restructure the Arrangement so that under no circumstance would a company have to return any portion of the expense allowance; reformat the Arrangement to make it easier to read; standardize references throughout the document, and add details to clarify responsibilities of private sector insurers under the Arrangement with regard to reporting requirements, litigation, and "errors and omissions."

EFFECTIVE DATE: October 1, 1997.**FOR FURTHER INFORMATION CONTACT:**

Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202-646-3443.

SUPPLEMENTARY INFORMATION: On May 1, 1997, FEMA published in the **Federal Register**, 62 FR 23736, a proposed rule to amend the NFIP regulations establishing the Financial Assistance/Subsidy Arrangement that may be entered into by and between the Administrator and private sector insurers under the Write Your Own (WYO) program. FEMA received five sets of comments on the proposed rule.

One WYO company considered the reference to WYO companies as insurers to be "ambiguous." The commenter added that this perceived ambiguity potentially transfers risk to the WYO companies. As FEMA responded last year on this issue, the Arrangement is a financial assistance/subsidy agreement that FEMA shall honor with its industry partners as it has for the past fourteen years—within the scope of Congressional authorization and the

safeguards built into the enabling legislation to facilitate continued operation of the NFIP. Those safeguards include: 1. the agency's borrowing authority for the National Flood Insurance Fund which operates independently of fiscal year authorization, and 2. financial assistance of the Federal Government for the WYO companies as spelled out in the Arrangement. In addition to those safeguards and the Federal financial backing of the private insurers participating in the Arrangement, the *quid pro quo* of sound mitigation in return for public backing of flood insurance is at the very foundation of the NFIP. It was the express wish of Congress that in time the private sector would assume more of a share of the risk, as the NFIP's mitigation programs and activities reduce the exposure of properties to flood loss. In FEMA's view, the references in Article I to the evolution of risk-sharing by participating companies are appropriate in the light of both the Congressional intent for the program and FEMA's continuing success in partnership with State and local governments in achieving more effective flood hazard mitigation. To place these concerns in clearer perspective, FEMA and the companies understand that participation on the part of private insurers in the program is voluntary, and, as with any risk venture, the insurer will weigh the advantages of the WYO program against any uncertainties—regardless of how remote—before making an informed decision to participate.

Three companies expressed concern that the marketing guidelines are not in the Arrangement and are only referred to in Article II. G. One of the commenters believed that, since companies do not know until the Arrangement is published as a final rule what the marketing guidelines are, this absence could affect a company's decision to enter into the Arrangement. In a related concern about Article III, the same commenter said "without knowing the "marketing goal" for 1998, it's impossible to know whether we can earn more than the minimum expense allowance. Such uncertainty is patently unfair, a violation of the insurer's due process and not suitable for either party to the Arrangement."

FEMA acknowledges the concern but does not agree with the commenter's conclusions concerning due process or fairness. Simultaneous with the publication of this rule, marketing goals will be distributed by FEMA. Hence, a company will have approximately two months to make an informed decision

whether it wishes to sign the Arrangement for the coming year. Historically, providing marketing guidelines after publication of the final Arrangement for the coming year has given companies enough time and has not proved to be an obstacle for participation in the WYO program. Companies for this year, as in the past, will continue to have complete information on marketing guidelines—the basis for the amount of premium income a company may retain—before being asked to sign the Arrangement. FEMA does not foresee any problems developing on this score.

Another company that expressed concerns about the program's marketing goals recommended that a company's marketing efforts and expenditures should be analyzed and considered by FIA in addition to the company's actual growth results as the basis for determining the percentage of premium income to be retained by the company. FEMA acknowledges that in order to achieve marketing goals a company will have to invest its own resources; however, unlike accomplishments, which can be measured, there is no way to measure effort or activity per se. FEMA believes however that the increase in the expense allowance that a company may retain under this year's Arrangement takes into account any increased efforts that companies will make to market flood insurance. Hence, the Arrangement for this year will continue to tie a WYO company's retention of premium income to performance, i.e., actual growth in flood insurance policies. FEMA will however review any relevant data during the 1997-8 Arrangement year that would warrant further adjustment to the percentages of retained premium income for subsequent Arrangements.

The third company commenting on the marketing goals recommended that under "Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds" of the Arrangement, the maximum expense allowance a company may retain be increased from 32.9 percent to 33.6 percent. This company claimed that "having a maximum recovery of 32.9 percent is just too low to justify the expense involved achieving the necessary new policy growth targets" and recommended 33.6 percent as the maximum expense allowance a company may retain based on its performance.

FEMA disagrees with this recommendation. The minimum level of premium income a company may retain for the 1997-8 Arrangement year has been increased from 30.6 percent to 31.6

percent while the maximum earning of 32.9 percent of retained premium also represents a substantial increase. It should be emphasized that under former Arrangements, the maximum a company in the WYO program could earn was equivalent to the average expense ratios for "Other Acq.," "General Exp.," and "Taxes," as published in the latest available "Best's" Aggregates and Averages: Property Casualty Insurance Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril Combined. The "Best's" average for this year is 31.9 percent. Hence, the maximum earning for companies participating in the WYO program for the 1997–8 Arrangement year—32.9 percent—is one percent above the "Best's" average—the former maximum WYO companies could earn under the NFIP.

FEMA believes therefore that the increases in the percentage of premium a WYO company may retain in connection with its performance proposed for this year's Arrangement are appropriate and have been retained in the final rule. FEMA plans to revisit the expense allowance percentages vis-à-vis performance prior to the Arrangement Year for 1998–9.

The issue of surcharges on flood insurance premium and guaranty fund assessments was raised in several comments. A change was made in last year's Arrangement regarding surcharges on flood insurance premium and guaranty fund assessments. That provision has been retained. FIA will review the issue during the next Arrangement year and propose any further adjustments regarding such surcharges during the rulemaking process in connection with the 1998–9 Arrangement.

One commenter objected that the percentage (3.3 percent) paid to WYO companies for unallocated loss adjustment expenses is inadequate—one that has not changed since the program's inception. As FEMA indicated in the publication of last year's Arrangement, "the matter * * * warrants review, and any modification to the loss adjustment expense will be considered at the end of the current Arrangement year." FEMA has been reviewing this matter, and we expect to have a final determination on this issue before the 1998–9 Arrangement year. The 3.3 percent for unallocated loss adjustment expense has been retained in this year's Arrangement until our review is complete.

One commenter recommended that the fee schedule be restored as Exhibit A to the Arrangement. The fee schedule was removed last year from the

Arrangement in the interest of flexibility and expedition. Since any change to the fee schedule will be closely coordinated with participating WYO companies, the decision to remove the fee schedule from last year's Arrangement will be followed this year as well.

One commenter cited an inconsistency in "Article II.B. Time Standards" in which the standards are referred to as both "guidance" and "requirements." We agree that there is an inconsistency and have deleted the reference to "guidance" from "Article II. Time Standards."

Two companies asked whether the impact of claims for loss under Increased Cost of Compliance (ICC) coverage on company's adhering to time standards has been taken into consideration. It should be noted that the claim under ICC coverage is a separate claim from the claim for direct physical loss from flood under the policy and is usually filed after the insured has done some preliminary coordination with local officials and contractors. The "clock" for ICC claims will not begin until the loss is reported by the insured. Also, a WYO company will not be penalized because of any inaction or delays by the insured or the local government. However, since ICC is a new product, FEMA will evaluate the program's experience with ICC claims during the 1997–8 Arrangement year and propose any appropriate changes to the time standards before the next Arrangement year.

One commenter expressed concern that the reference to "litigation and/or claim" in Article III.D.3. is confusing and should be changed to "notice of claim in litigation" or "claim in litigation." FEMA agrees and has changed the phrase in the last sentence of the first paragraph of Article III.D.3 to read, "claim in litigation."

Another company expressed concern over the requirement for the company to notify both the FIA Administrator and FEMA's OGC of claims in litigation. The company recommends that the reporting requirements of claims in litigation be limited to the FIA Administrator. The reason for the Arrangement's dual reporting requirement is that the notification to the FIA Administrator is for the purpose of prompt payment of bills to the company assuming that all required information has been submitted. The reason for a separate notification of FEMA's Office of General Counsel, however, is to ensure that FEMA's Office of General Counsel will be involved in the review of any litigation as soon as possible should assistance be requested or needed by the company. FEMA agrees that it would be

more appropriate for the company to submit notice of litigation in duplicate to the FIA Administrator who will then ensure that the Office of General Counsel receive its copy. The language of the second paragraph of Article III. D. 3 has been changed to read, "Prompt notice, in duplicate, of any such claim for damages within the scope of this section (D) shall be sent to the Administrator along with a copy of any material pertinent to the claim for damages. The Administrator shall furnish one copy of all such claims to the Associate General Counsel for Litigation, FEMA OGC, 500 C St. SW, Washington, DC 20472. Following the initial notice of claims in litigation, the company must submit all pertinent material and billing documentation as it becomes available. Within 60 days of the receipt of a claim in litigation by the Company, the company must submit an initial case analysis and legal fee estimate. Failure to meet these notice requirements may result in the Administrator's decision not to reimburse expenses for which FIA and the FEMA OGC have not been notified in a timely manner."

This change does not prevent a company, if it so chooses, in the interest of expedition, to follow the procedure as proposed in the May 1, 1997 proposed rule and submit notices of claims in litigation simultaneously to both the FIA Administrator as well as the FEMA's Office of General Counsel.

The same company also claimed that revised language in "Article IX—Errors and Omissions" could be construed "as an ambiguity allowing for a challenge to the doctrine of federal preemption for the National Flood Insurance Program." The following language was cited by the company as the cause for ambiguity and concern. "In the event that steps are not taken to rectify the situation and such action leads to claims against the company, the NFIP, or other related entities, the responsible parties shall bear all liability attached to that delay, error, or omission to the extent permissible by law." This change to the text does not affect the policy regarding errors and omissions nor will it affect the doctrine of Federal preemption to the extent Federal preemption would be applied to a particular issue. The change clarifies that a party will not be held responsible for inadvertent errors and omissions until those errors became known to that party and are ignored and that party or parties do not take steps to rectify the situation. Furthermore, the party at fault will bear liability only to the extent permissible by law.

In addition to the comments submitted by WYO companies, one commenter asked three specific questions about the WYO Arrangement. The correspondent asked whether the 32.6 percent expense allowance includes reimbursement for insurers' loss adjustment expenses. Unallocated loss adjustment expenses are not included in the 32.6 percent expense allowance and are in addition to that expense allowance. The same correspondent asked if there is a separate provision to reimburse for loss adjustment expenses. There is such a provision at Article III. C, titled "Loss Adjustment Expenses." For unallocated loss adjustment expenses, the fee is 3.3 percent. For unallocated loss adjustment expenses, there is a separate fee schedule which is distributed separately to the private companies participating in the WYO program. Those not participating in the WYO program may receive a copy of the fee schedule for allocated loss adjustments upon written request to the FIA Administrator, 500 C Street SW., Washington, DC 20472.

The FIA received two inquiries regarding the language of Article III—Loss, Costs, Expenses, Expense Reimbursement, and Premium Refunds.

One Write Your Own Company requested clarification regarding the determination by FEMA under Article III, D., 4. that a case in litigation is "grounded in actions by the company that are significantly outside the scope of this Arrangement." Article III D. 4. of the Arrangement provides that such a determination means that "any award or judgement for damages arising out of such actions will not be recognized under Article III of this arrangement as a reimbursable loss cost expense reimbursement."

Any determination that a case in litigation is "grounded in actions by the company that are significantly outside the scope of this Arrangement" would be made on a case-by-case basis based on sufficient information to make a reasonable determination and would also involve an examination of typical business practices in the insurance industry. What is considered sufficient information and typical business practices will depend on the case in question.

Another Write Your Own Company requested a "time standard guideline" for FEMA to make this determination. FEMA is committed to make such a determination as promptly as possible after receipt of sufficient information to make an informed decision.

Finally, in the proposed rule, the "Effective Date" was incorrectly listed as October 1, 1996. The "Effective Date"

in the final rule has been corrected to read October 1, 1997.

National Environmental Policy Act

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

Executive Order 12898, Environmental Justice

The socioeconomic conditions to this rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, 44 CFR part 62 is amended as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Appendix A of part 62 is revised to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/ Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1997.

Issued By: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the "Program" or "NFIP") "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, overtime, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/ Subsidy Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertaking of the Company

A. Eligibility Requirements for Participation in the NFIP:

1. Policy Administration. All fund receipt, recording, control, timely deposit

requirements, and disbursement in connection with all Policy Administration and any other related activities or correspondences, must meet all requirements of the Financial Control Plan. The Company shall be responsible for:

- a. Compliance with the Community Eligibility/Rating Criteria
- b. Making Policyholder Eligibility Determinations
- c. Policy Issuance
- d. Policy Endorsements
- e. Policy Cancellations
- f. Policy Correspondence
- g. Payment of Agents' Commissions

2. Claims Processing. All claims processing must be processed in accordance with the processing of all the companies' insurance policies and with the Financial Control Plan. Companies will also be required to comply with FIA Policy Issuances and other guidance authorized by FIA or the Federal Emergency Management Agency ("FEMA").

3. Reports.

a. Monthly Financial Reporting and Statistical Transaction reporting requirements. All monthly financial reporting and statistical transaction reporting shall be in accordance with the requirements of the NFIP Transaction Record Reporting and Processing Plan for the Company Program and the Financial Control Plan for business written under the WYO (Write Your Own) Program. 44 CFR part 62, appendix B. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company reports.

b. Monthly financial reporting procedure shall be in accordance with the WYO Accounting Procedures.

B. Time Standards. Time will be measured from the date of receipt through the date mailed out. All dates referenced are working days, not calendar days. In addition to the standards set forth below, all functions performed by the company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing field. Continual failure to meet these requirements may result in limitations on the company's authority to write new business or the removal of the Company from the program. Applicable time standards are:

1. Application Processing—15 days (note: if the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added moneys shall be mailed within 10 days);
2. Renewal Processing—7 days.
3. Endorsement Processing—15 days.
4. Cancellation Processing—15 days.
5. Claims Draft Processing—7 days from completion of file examination.
6. Claims Adjustment—45 days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

C. Single Adjuster Program. To ensure the maximum responsiveness to the NFIP policy holders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program using procedures issued by the

Administrator. The Single Adjuster procedure shall be followed in the following cases:

1. Where the flood and wind coverage is provided by the Company;
2. Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism; and
3. Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

D. Policy Issuance.

1. The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.
2. The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act.
3. All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator.

4. All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business.

5. The Administrator may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its

obligations under this Arrangement but excluding other taxes or fees, such as surcharges on flood insurance premium and guaranty fund assessments.

B. The Company shall be entitled to withhold, as operating and administrative expenses, including agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Section C. of this Article, which amount shall be a minimum of 31.6% of the Company's written premium on the policies covered by this Arrangement.

The amount of expense allowance retained by the company may be increased to a maximum of 32.9%, depending on the extent to which the company meets the marketing goals for the 1997–1998 Arrangement year contained in marketing guidelines established pursuant to Article II.G. The amount of any increase shall be paid to the company after the end of the 1997–1998 Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to a "Fee Schedule" coordinated with the Company and provided by the Administrator.

3. Special allocated loss expenses shall be reimbursed to the Company in accordance with guidelines issued by the Administrator.

D. Loss Payments.

1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation which arises under the scope of this Arrangement, and the Authorities set forth above. All such loss payments must meet the documentation requirements of the Financial Control Plan and of this Arrangement. The Company will be reimbursed for errors and omissions only as set forth at Article IX of this Arrangement.

3. Notification of claims in litigation against the company. To ensure

reimbursement of costs expended to defend a claim in litigation against the Company, the Company must promptly notify FIA.

Prompt notice, in duplicate, of any such claim in litigation within the scope of this section (D) shall be sent to the FIA along with a copy of any material pertinent to the claim in litigation. FIA shall forward one copy of all such claims to the Associate General Counsel for Litigation, FEMA OGC, to ensure that the FEMA OGC is aware of all pending litigation. Following the initial notice of claims in litigation, to ensure expeditious reimbursement, the company must submit all pertinent material and billing documentation as it becomes available. Within 60 days of the receipt of a notice of claim in litigation by the Company, the Company must submit an initial case analysis and legal fee estimate for billing support. Failure to meet these notice requirements may result in the Administrator's decision not to reimburse expenses for which FIA and the FEMA OGC have not been notified in a timely manner.

4. **Limitation on Litigation Costs.** Following receipt of notice of such claim, the Office of General Counsel (OGC), FEMA, shall review the information submitted. If it is determined that the claim is grounded in actions by the Company that are outside the scope of this Arrangement, the National Flood Insurance Act, and 44 CFR chapter 1, subchapter B, and/or involve issues of insurer/agent negligence as discussed in Article IX of this Arrangement, the OGC shall make a recommendation to the Administrator as to whether the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement. In the event the Administrator determines that the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement, the Company will be notified, in writing, within thirty (30) days of the Administrator's decision, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration the determination that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from Federal flood insurance funds referred to in Article

II, Section E, and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections C, D, and E. Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than \$5,000, and in no case more than \$5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D;
2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and
3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.
2. A mechanism to assist in clarification of coverage and claims questions.
3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/ Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for a period not to exceed one (1) year following the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

1. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

2. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

3. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to FEMA such summaries and analyses of information including claim file information, and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in

cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by the FIA.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination that shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by inadvertent delay, error, or omission made in connection with any transaction under this Arrangement. In the event of such actions, the responsible party must attempt to rectify that error as soon as possible after discovery of the error and act to mitigate any costs incurred due to that error. In the event that steps are not taken to rectify the situation and such action leads to claims against the company, the NFIP, or other related entities, the responsible party shall bear all liability attached to that delay, error or omission to the extent permissible by law.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or Trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance

only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access To Books and Records

The FIA and the Comptroller General of The United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, the National Flood Insurance Reform Act of 1994, and Regulations issued pursuant thereto and all Regulations affecting

the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

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

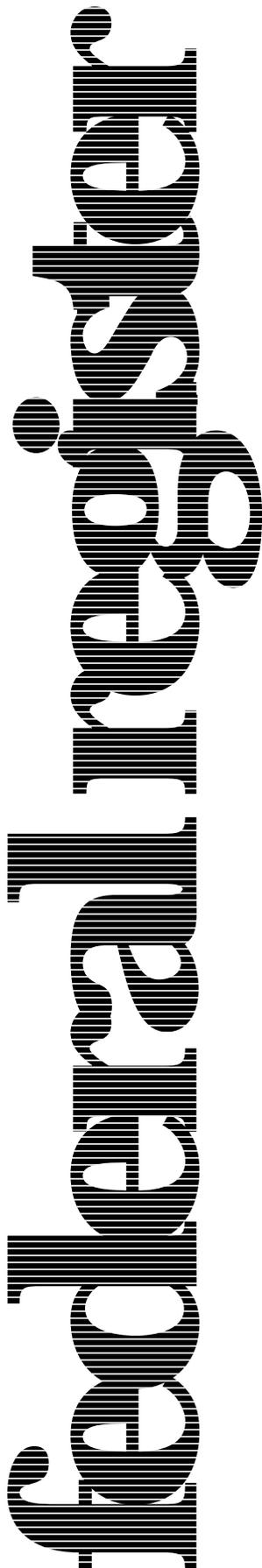
Dated: July 18, 1997.

Spence W. Perry,

Executive Administrator, Federal Insurance Administration.

[FR Doc. 97-19497 Filed 7-23-97; 8:45 am]

BILLING CODE 6718-03-P



Thursday
July 24, 1997

Part IV

**Department of
Justice**

Bureau of Prisons

**28 CFR Part 544
Mandatory English-as-a-Second Language
Program; Final Rule**

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP-1013-F]

RIN 1120-AA19

Mandatory English-as-a-Second Language Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document finalizes interim rules pertaining to statutory mandatory functional literacy requirements. The functional literacy requirements provide that inmates who are not proficient in English must participate in an English-as-a-Second-Language (ESL) program until they function at the eighth grade level on a nationally recognized achievement test. This amendment is intended to allocate Bureau resources designed to assist inmates who are not functionally literate in English.

EFFECTIVE DATE: July 24, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is finalizing interim regulations for its Mandatory English-as-a-Second-Language (ESL) program. Mandatory functional literacy requirements contained in 18 U.S.C. 3624(f) require non-English speaking inmates to participate in an ESL program until they function at an eighth grade level on a nationally recognized educational achievement test. The Bureau's interim regulations

implemented the statutory requirements by requiring qualified federal inmates to participate in an ESL program unless the Warden has excused the inmate for good cause. The regulations also included a provision for incentives to help effectuate inmate motivation and success. In addition, this rule included procedures to identify inmates who qualify for the program and recordkeeping requirements to monitor inmate progress.

The Bureau received no comment on the interim regulations. In adopting the interim regulations as final, the Bureau does wish to make one administrative change. The Bureau is restating the time frame for minimum required participation in terms of instructional hours, with 240 instructional hours being the equivalent of 120 calendar days. Paragraph (d) of § 544.42 has been revised accordingly.

Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons certifies that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, the interim rule amending 28 CFR part 544 which was published at 59 FR 14724 on March 29, 1994, is adopted as a final rule with the following change.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 544.42, paragraph (d) is revised to read as follows:

§ 544.42 Procedures.

* * * * *

(d) Ordinarily, there will be no time limit for completion of the ESL mandatory program. However, after 240 instructional hours of continuous enrollment in an ESL program, excluding sick time, furloughs, and other excused absences from scheduled classes, the Warden shall have the authority to grant a waiver from further program participation. This waiver may be granted when it is determined that the inmate will not benefit from further instruction. Each exemption determination shall be made on an individual basis and shall be supported by documentation.

[FR Doc. 97-19520 Filed 7-23-97; 8:45 am]

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Federal Register

Vol. 62, No. 142

Thursday, July 24, 1997

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FEDERAL REGISTER PAGES AND DATES, JULY

35337-35658	1
35659-35946	2
35947-36198	3
36199-36446	7
36447-36644	8
36645-36964	9
36965-37124	10
37125-37484	11
37485-37706	14
37707-38014	15
38015-38202	16
38203-38420	17
38421-38896	18
38897-39100	21
39101-39414	22
39415-39746	23
39747-39916	24

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	920.....36231, 36743
	930.....36020
Proclamations:	981.....36233
6641 (See	985.....36236
Proclamation	1005.....39470
7011).....35909	1007.....39470
6763 (See	1011.....36022, 37524, 39470
Proclamation	1046.....39470
7011).....35909	1137.....37524
7011.....35909	1944.....36467
7012.....39413	
Executive Orders:	8 CFR
12721 (See EO	103.....39417
13054).....36965	245.....39417
12852 (Amended by	274a.....39417
EO 13053).....39945	316.....36447
13017 (Amended by	Proposed Rules:
EO 13056).....39415	204.....38041
13052.....35659	
13053.....39945	9 CFR
13054.....36965	77.....37125
13056.....39415	78.....38443
Memorandums:	92.....38445
July 16, 1997.....38421	Proposed Rules:
	317.....38220
5 CFR	381.....38220
890.....38433	
7201.....36447	10 CFR
Proposed Rules:	20.....39058
880.....35693	30.....39058
	40.....39058
7 CFR	50.....39058
2.....37485	51.....39058
300.....36967	70.....39058
301.....36645, 36976	72.....39058
318.....36967	Proposed Rules:
354.....39747	20.....39093
455.....35661, 35662	40.....39093
456.....35666	430.....36024, 38222
457.....35662, 35666	451.....36025
946.....36199	
959.....38203	11 CFR
981.....37485, 37488	104.....35670
985.....36646	
1005.....39738	12 CFR
1006.....36650	338.....36201
1007.....39738	790.....37126
1046.....39738	902.....35948
1137.....35947	Proposed Rules:
1215.....39386	9.....36746
1220.....37488	202.....37166
1280.....38897	226.....38489
1381.....36651	250.....37744
1437.....36978	303.....37748
3405.....39316	325.....37748
3406.....39330	326.....37748
Proposed Rules:	327.....37748
29.....35452	346.....37748
301.....37159	347.....37748
401.....39189	351.....37748
450.....37000	362.....37748
457.....37000, 39189	545.....39477
800.....38488	

550.....39477	239.....38495	40.....37490	685.....35602
563e.....39477	240.....36467	54.....35904	37 CFR
611.....38223	249.....36467	301.....39115	201.....35420
614.....38223	270.....38495	602.....35904	202.....35420
620.....38223	274.....38495	Proposed Rules:	203.....35420
630.....38223	18 CFR	1.....35752, 35755, 37818,	38 CFR
13 CFR	35.....36657	37819, 38197	1.....35969
123.....35337	381.....36981	301.....37819, 38197	3.....35421, 35969, 35970
14 CFR	19 CFR	28 CFR	9.....35969
39.....35670, 35950, 35951,	101.....37131	0.....38028	21.....35423
35953, 35956, 35957, 35959,	122.....37131	17.....36984	Proposed Rules:
36448, 36652, 36978, 37127,	201.....38018, 39438	32.....37713, 39119	17.....39197
37128, 37130, 37707, 37710,	Proposed Rules:	544.....39916	19.....36038
38015, 38017, 38204, 38206,	101.....37526	29 CFR	21.....35454, 35464
38445, 38447, 38898, 39101,	351.....38948	1600.....36447	36.....37824
39425, 39427, 39428	20 CFR	1650.....36447	39 CFR
71.....35894, 38208, 38209,	404.....38448	1926.....37134	3001.....35424
38210, 38211, 38212, 38213,	410.....38448	2200.....35961	40 CFR
39429, 39430, 39431, 39432,	416.....36460, 38448	2203.....35961	9.....37720
39433, 39434, 39435	422.....38448	2204.....35961	50.....38652, 38762, 38856
97.....39435, 39437	Proposed Rules:	2520.....36205	52.....35441, 35681, 36212,
121.....38362	702.....35715	2590.....35904	36214, 37136, 37138, 37494,
125.....38362	21 CFR	4000.....36993	37506, 37510, 37722, 37724,
129.....38362	1.....39439	4001.....35342	38213, 38457, 38909, 38912,
135.....38362	50.....39439	4004.....37717	38915, 38918, 38919, 38922,
Proposed Rules:	165.....36460	4007.....36663	39120, 39446
25.....37124, 38945	176.....39770	4010.....36993	53.....38764
39.....35696, 35698, 35700,	178.....36982, 39441	4011.....36993	58.....38764
35702, 35704, 35706, 35708,	314.....39890	4043.....36993	60.....36664
35709, 35711, 36240, 36747,	510.....38905, 39442	4071.....36993	62.....36995
37170, 37778, 37788, 37798,	520.....37711, 37712, 38905,	4302.....36993	63.....36460, 37720
37808, 38491, 38493, 39194,	38906, 39443	30 CFR	70.....37514
39195, 39490, 39492, 39784,	522.....37713, 38905, 38907	250.....39773	81.....35972, 38213
39787, 39789, 39791, 39793	524.....38907	256.....36995, 39773	180.....35683, 36665, 36671,
71.....35713, 37172	600.....39890	902.....35342	36678, 36684, 36691, 37516,
187.....38008	601.....39890	946.....35964	38464
401.....36027	610.....39890	Proposed Rules:	185.....38464
411.....36027	640.....39890	202.....38509	186.....38464
413.....36027	814.....38026	206.....36030, 38509	268.....37694
415.....36027	Proposed Rules:	211.....38509	281.....36698
417.....36027	Ch. I.....36243	250.....37819	300.....35441, 35689, 35974,
440.....36028	101.....36749	935.....36248, 38509	36997, 37522
15 CFR	872.....38231	31 CFR	403.....38406
922.....35338, 36655, 39494	1308.....37004	285.....36205	721.....35689, 35690
946.....38901	22 CFR	Proposed Rules:	Proposed Rules:
Proposed Rules:	126.....37133	103.....36475, 38511	52.....35756, 36249, 37007,
30.....36242	201.....38026	32 CFR	37172, 37175, 37526, 37527,
922.....37818	24 CFR	176.....35343	37832, 38949, 38950, 38951,
16 CFR	586.....37478	286.....35351, 38197	39199, 39202, 39795
601.....35586	Proposed Rules:	706.....37719	55.....38047
1000.....36450	201.....36194	33 CFR	60.....36948
1017.....36450	202.....36194	27.....35385, 39313	62.....37008
Proposed Rules:	207.....35716	100.....35387, 35388, 35390,	63.....38053
1700.....38948	251.....35716	35391, 39443, 39775	70.....36039, 37533
17 CFR	252.....35716	38908	80.....37338
4.....39104	255.....35716	117.....38908	81.....38237
200.....36450	266.....35716	144.....35392	82.....36428
228.....36450, 39755	950.....35718	155.....37134	86.....38053
229.....36450, 39755	953.....35718	165.....35392, 35393, 35394,	131.....38512
230.....36450, 39755	955.....35718	35395, 35396, 35398,	141.....36100
232.....36450, 39755	1000.....35718	335398, 35399, 35400,	142.....36100
239.....35338, 36450, 39755	1003.....35718	35401, 35402, 35403, 35405,	180.....35760, 38513
240.....35338, 36450, 39755	1005.....35718	35680, 35968, 37135, 38456,	186.....35760
249.....35338, 39755	3500.....38489	39444, 39445	260.....37183
260.....36450	26 CFR	Proposed Rules:	261.....37183
269.....35338	1.....35673, 37490, 38027,	84.....36037	273.....37183
Proposed Rules:	39115	100.....38042	300.....38239
202.....38495	31.....37490	110.....38511	372.....39797
230.....38495		117.....35453, 38043	799.....37833
232.....36467, 38483		34 CFR	42 CFR
		222.....35406	67.....37124

Proposed Rules:	39780, 39781	7.....36250	Proposed Rules:
1001.....39798	76.....38029	8.....36250	23.....38952
44 CFR	Proposed Rules:	12.....37874	26.....38952
62.....39908	Ch. I.....36752, 38244	14.....37874	192.....37008
64.....39448	20.....38951	15.....36250, 37874	195.....37008
65.....37727, 39123, 39125	52.....36476	16.....36250	213.....36138
67.....37729, 39127	68.....36476	17.....36250	385.....36039
Proposed Rules:	73.....36250, 36756, 37008,	19.....37874	525.....39207
67.....37834, 39203	38053, 38054, 38245, 38246,	22.....36250	571.....36251
	39798	27.....36250	594.....37847
	80.....37533	28.....36250	1002.....36477
45 CFR	48 CFR	31.....35900, 36250	1181.....36480
16.....38217	Ch. VII.....39452	32.....36250	1182.....36477, 36480
74.....38217	235.....37146	33.....37874	1186.....36480
75.....38217	243.....37146	35.....36250	1187.....36477
95.....38217	252.....37146, 37147	42.....36250	1188.....36477, 36480
146.....35904	552.....38475	43.....36250	
148.....35904	1514.....37148	44.....36250	50 CFR
Proposed Rules:	1515.....37148	45.....36250	17.....36481, 36482, 38932,
Ch. XII.....38241	1535.....38476	46.....35900	39129, 39147
98.....39610	1552.....37148, 38476	49.....36250	20.....39712
99.....39610	1803.....36704	51.....36250	227.....38479
1201.....38241	1804.....36704	52.....35900, 36250, 37847	229.....39157
46 CFR	1807.....36704	53.....36250, 37847	285.....35447, 36998, 38036,
109.....35392	1809.....36704	245.....37185	38037, 38485, 38939
159.....35392	1813.....36704	252.....37185	300.....38037
160.....35392	1815.....36704	9903.....37654	648.....36704, 36738, 37154,
199.....35392	1816.....36704	49 CFR	37741, 38038
296.....37733	1819.....36704	1.....38478	660.....35450, 36228, 38942,
47 CFR	1822.....36704	171.....39398	39782
Ch. I.....36216	1824.....36704	172.....39398	678.....38942
1.....37408, 38029, 38475,	1825.....36704	173.....37149	679.....36018, 36739, 36740,
39450	1827.....36704	193.....36465	36741, 37157, 37523, 38039,
32.....39450, 39776	1832.....36704	355.....37150	38943, 38944, 39782, 39783
43.....39776	1836.....36704	369.....38034	Proposed Rules:
59.....36998	1837.....36704	372.....38035	17.....35762, 37852, 38953,
63.....39451	1839.....36704	382.....37150	38958, 39209, 39210
64.....35974, 39776	1842.....36227, 37335	383.....37150	25.....38959
68.....36463	1844.....36704	384.....37150	32.....38959
73.....36226, 36227, 36699,	1845.....36704	389.....37150	216.....39799
36700, 36701, 36678, 36684,	1852.....36704	391.....37150	285.....36040, 36739, 36872
36691, 37144, 37145, 37522,	1853.....36704	392.....37150	600.....35468
38029, 38030, 38031, 38032,	1870.....36704	531.....37153	622.....35774
38033, 38218, 39128, 39779,	Proposed Rules:	1002.....35692	630.....38246
	4.....36250	1180.....35692	679.....37860

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 24, 1997**AGRICULTURE DEPARTMENT**

Freedom of Information Act and Privacy Act; implementation:

Federal regulatory reform; published 6-24-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Virginia; published 6-24-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Texas et al.; published 7-24-97

GOVERNMENT ETHICS OFFICE

Executive Branch financial disclosure, qualified trust, and certificates of divestiture:

No new interests certificate; optional use; published 6-24-97

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Food additives:

Paper and paperboard components—
Dinonylphenol; published 7-24-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:

HOPE for homeownership of single family homes program (HOPE 3); published 6-24-97

JUSTICE DEPARTMENT Prisons Bureau

Institutional management:

Mandatory English-as-a-second language program; published 7-24-97

PERSONNEL MANAGEMENT OFFICE

Intergovernmental Personnel Act programs:

Personnel administration by State and local

governments; merit systems standards; published 6-24-97

TRANSPORTATION DEPARTMENT**Coast Guard**

Merchant marine officers and seamen:

Commercial vessel personnel—

Chemical drug and alcohol testing programs; foreign implementation date; published 6-24-97

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Fruits, vegetables, and other products, fresh:

Apples; grade standards; comments due by 7-28-97; published 5-29-97

Milk marketing orders:

Tennessee Valley; comments due by 7-31-97; published 7-14-97

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Hog cholera and swine vesicular disease; disease status change—

Spain; comments due by 7-28-97; published 5-27-97

Plant-related quarantine, domestic:

Gypsy moth; comments due by 7-29-97; published 5-30-97

AGRICULTURE DEPARTMENT**Farm Service Agency**

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

AGRICULTURE DEPARTMENT**Rural Business-Cooperative Service**

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

AGRICULTURE DEPARTMENT**Rural Housing Service**

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

AGRICULTURE DEPARTMENT**Rural Utilities Service**

Program regulations:

Community and insured business programs; servicing loans and grants; comments due by 8-1-97; published 6-2-97

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific Ocean perch; comments due by 7-28-97; published 7-16-97

Northeastern United States fisheries—

Summer flounder; comments due by 8-1-97; published 6-2-97

Habitat conservation planning and incidental take permitting process; handbook availability; no surprises policy; comments due by 7-28-97; published 5-29-97

Magnuson-Stevens Fishery Conservation and Management Act; implementation:

Regional fishery management council members appointment; comments due by 7-31-97; published 7-1-97

Pacific Halibut Commission, International:

Pacific halibut fisheries—
Oregon sport fishery; comments due by 7-31-97; published 7-16-97

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Government property; comments due by 8-1-97; published 6-2-97

EDUCATION DEPARTMENT

Special education and rehabilitative services:

Individuals with Disabilities Education Act Amendments of 1997—
Programs implementation; advice and

recommendations request; comments due by 7-28-97; published 6-27-97

ENERGY DEPARTMENT Energy Efficiency and Renewable Energy Office

Energy conservation:

Renewable energy production incentive program; comments due by 7-31-97; published 6-10-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Light-duty vehicles and trucks; on-board diagnostics requirements; comments due by 7-28-97; published 5-28-97

Air programs:

Clean Air Act—
Special exemptions; Guam; comments due by 7-30-97; published 6-30-97

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 7-28-97; published 6-26-97

Missouri; comments due by 8-1-97; published 7-2-97

Tennessee; comments due by 8-1-97; published 7-2-97

Air quality planning purposes; designation of areas:

Nevada; comments due by 7-28-97; published 6-26-97

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 7-30-97; published 6-30-97

Toxic substances:

Significant new uses—
1-Aspartic acid, homopolymer and ammonium and potassium salts, etc.; comments due by 7-28-97; published 6-26-97

Butanamide, 2,2'-[3'dichloro[1,1'-biphenyl]-4,4'-diyl]bisazobis N-2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo; comments due by 7-28-97; published 6-26-97

Substituted phenol, etc.; comments due by 7-28-97; published 6-26-97

Water pollution control:

Clean Water Act and Safe Drinking Water Act—
Pollutant analysis test procedures; approval process streamlined; guidelines; correction; comments due by 8-1-97; published 6-26-97

Water quality standards—
Alaska; arsenic human health criteria; withdrawal; comments due by 8-1-97; published 7-18-97

EXECUTIVE OFFICE OF THE PRESIDENT**Central Intelligence Agency**

Freedom of Information and Privacy Acts; implementation; comments due by 7-28-97; published 6-16-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Commercial mobile services—
Wireless services compatibility with enhanced 911 calling; comments due by 7-28-97; published 7-21-97

Competitive bidding procedures; comments due by 8-1-97; published 7-9-97

Radio stations; table of assignments:

Idaho; comments due by 7-31-97; published 5-21-97

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Government property; comments due by 8-1-97; published 6-2-97

HEALTH AND HUMAN SERVICES DEPARTMENT**Health Care Financing Administration**

Medicare:

Hospital inpatient prospective payment systems and 1998 FY rates; comments due by 8-1-97; published 6-2-97

Mental Health Parity Act of 1996 and Newborns' and Mothers' Health Protection Act of 1996; implementation; comments due by 7-28-97; published 6-26-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:

Housing assistance payments (Section 8)—

Fair market rent schedules for rental certificate, loan management, property disposition, moderate rehabilitation, and rental voucher programs; comments due by 7-29-97; published 4-30-97

Mortgage and loan insurance programs:

Direct endorsement mortgagees; delegation of insuring authority; comments due by 8-1-97; published 6-2-97

INTERIOR DEPARTMENT Fish and Wildlife Service

Endangered and threatened species:

Preble's meadow jumping mouse; comments due by 7-28-97; published 5-5-97

Habitat conservation planning and incidental take permitting process; handbook availability; no surprises policy; comments due by 7-28-97; published 5-29-97

INTERIOR DEPARTMENT Minerals Management Service

Outer Continental Shelf; geological and geophysical explorations; comments due by 7-29-97; published 5-28-97

INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office

Environmental statements; availability, etc.:
Permanent program regulations, etc.; comments due by 8-1-97; published 5-30-97

Initial and permanent regulatory programs:
Surface coal mining and reclamation operations—
Valid existing rights (VER) definition and claims submission and processing procedures; comments due by 8-1-97; published 5-30-97

JUSTICE DEPARTMENT Drug Enforcement Administration

Schedules of controlled substances:
Excluded veterinary anabolic steroid implant products; comments due by 7-29-97; published 5-30-97
Exempt anabolic steroid products; comments due by 7-29-97; published 5-30-97

LABOR DEPARTMENT Employment Standards Administration

Longshore and Harbor Worker's Compensation Act:

Administration and procedure—
Civil penalties; comments due by 8-1-97; published 7-2-97

LABOR DEPARTMENT Mine Safety and Health Administration

Metal and nonmetal and coal mine safety and health:
Occupational noise exposure; comments due by 8-1-97; published 6-13-97

LABOR DEPARTMENT Occupational Safety and Health Administration

Safety and health standards, etc.:
Ethylene oxide standard; meeting; comments due by 8-1-97; published 5-27-97

LABOR DEPARTMENT Pension and Welfare Benefits Administration

Mental Health Parity Act of 1996 and Newborns' and Mothers' Health Protection Act of 1996; implementation; comments due by 7-28-97; published 6-26-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Government property; comments due by 8-1-97; published 6-2-97

NORTHEAST DAIRY COMPACT COMMISSION

Compact over-order price regulations; proceedings or petitions to modify or exempt; comments due by 7-30-97; published 6-30-97

NUCLEAR REGULATORY COMMISSION

Byproduct material; domestic licensing:
Funding by non-profit and non-bond issuing licenses; self guarantee; comments due by 7-29-97; published 4-30-97

SMALL BUSINESS ADMINISTRATION

Disaster loan programs:
Legal business entities engaged in agricultural enterprises and non-agricultural business ventures; comments due by 7-31-97; published 7-1-97

TRANSPORTATION DEPARTMENT Coast Guard

Boating safety regulations; comments due by 7-28-97; published 5-28-97

Coast Guard Authorization Act of 1996; implementation:
International management code for safe operation of ships and pollution prevention; development of parallel U.S. requirements; comments due by 7-30-97; published 5-1-97

Drawbridge operations:
Maryland; comments due by 7-31-97; published 4-21-97

TRANSPORTATION DEPARTMENT

Disadvantaged business enterprises participation in DOT financial assistance programs; comments due by 7-29-97; published 5-30-97

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:
Airbus Industrie; comments due by 7-28-97; published 6-18-97

Bombardier; comments due by 7-28-97; published 5-28-97

British Aerospace; comments due by 7-28-97; published 6-17-97

Dornier; comments due by 7-28-97; published 6-17-97

Pratt & Whitney; comments due by 7-28-97; published 5-27-97

Puritan Bennett Aero Systems Co.; comments due by 7-28-97; published 5-29-97

Class E airspace; comments due by 7-28-97; published 6-11-97

TRANSPORTATION DEPARTMENT**Federal Highway Administration**

Motor carrier safety standards:
Parts and accessories necessary for safe operation—

General amendments; comments due by 7-28-97; published 6-12-97

Safety fitness procedures—
Rating methodology; comments due by 7-28-97; published 5-28-97

Rating methodology; comments due by 7-28-97; published 7-3-97

TRANSPORTATION DEPARTMENT**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Controls and displays, accessibility and visibility; Federal regulatory review; comments due by 7-31-97; published 6-16-97

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous materials transportation—

Non-specification open head fiber drum packaging; authority for shipping certain liquid hazardous materials extended; comments due by 8-1-97; published 6-2-97

TREASURY DEPARTMENT Alcohol, Tobacco and Firearms Bureau

Small Business Job Protection Act of 1996; implementation:

Wine; small producers' tax credit and bond provisions; conforming changes; comments due by 8-1-97; published 6-2-97

TREASURY DEPARTMENT Fiscal Service

Financial management services:

Indorsement and payment of checks drawn on United States Treasury;

reissuance of procedural changes; comments due by 7-29-97; published 5-30-97

UNITED STATES INFORMATION AGENCY

Exchange visitor program:

Au pair programs; participation requirements; comments due by 7-28-97; published 6-27-97